

10-1-2008

Schmechel v. Dille Clerk's Record v. 8 Dckt. 35050

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Schmechel v. Dille Clerk's Record v. 8 Dckt. 35050" (2008). *Idaho Supreme Court Records & Briefs*. 2033.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2033

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

~~VAUGHN SCHEMECHER, ETAL~~

~~Plaintiff/Appellant~~

and

VS.

CLINTON DILLE, ETAL

~~Defendant/Respondent~~

and

FIFTH

Appealed from the District Court of the
Judicial District for the State of Idaho, in and
TWIN FALLS

for _____ County

G. RICHARD BEVAN

Hon. _____ District Judge

DAVID COMSTOCK

X

Attorney for Appellant

STEVEN HIPPLER

RICHARD HALL

Attorney X for Respondent

Filed this

FILED - COPY

, 20__

OCT - 11 2000

Clerk

By

Deputy

Supreme Court Court of Appeals

Entered on ATS by

GAKFON PRINTERS, CALDWELL, IDAHO 176085

35050 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually and as)
surviving spouse and Personal Representative)
of the Estate of Rosie Schmechel, deceased)
and ROBERT P. LEWIS, KIM HOWARD)
and TAMARA HALL, natural children of)
ROSALIE SCHMECHEL, deceased,)

CASE NO. CV 05-4345

Plaintiffs/Appellants,)

vs)

CLINTON DILLE, M.D., SOUTHERN)
IDAHO PAIN INSTITUTE, an Idaho)
Corporation, THOMAS BYRNE, P. A.,)
and JOHN DOE and JANE DOE, I through X,)

Defendants/Respondents.)

CLERK'S SUPPLEMENTAL RECORD ON APPEAL
VOLUME 5

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls

HONORABLE G. RICHARD BEVAN
District Judge

David Comstock
Byron Foster
199 N Capitol Blvd., Ste 500
P. O. Box 2774
Boise, ID 83701-2774

Steven Hippler
J. Will Varin
601 W, Bannock Street
P. O. Box 2720
Boise, ID 83701-2720

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

Supplemental Table of Contents

VOLUME 1

Clerk's Supplemental Record on Appeal, Volume 1	1
Supplemental Table of Contents, Volume 1	2
Supplemental Index, Volume 1	4
Register of Action, Printed September 11, 2008	6
Plaintiff's Expert Witness Disclosures, Filed April 20, 2007	23
Defendant Thomas J. Byrne's Disclosure of Expert Witnesses, Filed June 18, 2007	152

VOLUME 2

Clerk's Supplemental Record on Appeal, Volume 2	221
Supplemental Table of Contents, Volume 2	222
Supplemental Index, Volume 2	224
Register of Action, Printed September 11, 2008	226
Affidavit of Counsel in Support of Defendant Thomas Byrne, P.A.'s Motion in Limine RE: Various Issues, Filed September 27, 2007	243
Affidavit of J. Will Varin in Support of Clinton Dille and The Southern Idaho Pain Institute's Motions in Limine, Filed October 1, 2007	289
Defendants Clinton Dille, M.D. and Southern Idaho Pain Institutes' Memorandum in Support of Motions in Limine, Filed October 1, 2007	315
Memorandum in Support of Thomas J. Byrne's Motion in Limine Re: Various Issues, Filed October 1, 2007	341
Affidavit of J. Will Varin in Support of Clinton Dille and The Southern Idaho Pain Institute's Response to Plaintiffs' Motion in Limine, Filed October 5, 2007	365

VOLUME 3

Clerk's Supplemental Record on Appeal, Volume 3	432
Supplemental Table of Contents, Volume 3	433
Supplemental Index, Volume 3	435
Register of Action, Printed September 11, 2008	437
Affidavit of Byron Foster in Support of Plaintiffs' Pretrial Memorandum, Filed October 9, 2007	454
Plaintiffs' Proposed Jury Instructions, Filed October 9, 2007	501
Defendant Thomas J. Byrne, P.A.'s Proposed Jury Instructions, Filed October 9, 2007	562
Defendant Clinton Dille M.D. and Southern Idaho Pain Institute's Trial Brief, Filed October 10, 2007	602

VOLUME 4

Clerk's Supplemental Record on Appeal, Volume 4	627
Supplemental Table of Contents, Volume 4	628
Supplemental Index, Volume 4	630
Register of Action, Printed September 11, 2008	632
Defendants Clinton Dille M.D. and Southern Idaho Pain Institute's Jury Instructions, Filed October 10, 2007	649
Affidavit of Chris D. Comstock Regarding the Parties' Motions in Limine, Filed October 15, 2007	733

VOLUME 5

Clerk's Supplemental Record on Appeal, Volume 5	818
Supplemental Table of Contents, Volume 5	819

Supplemental Index, Volume 5821

Register of Action, Printed September 11, 2008823

Supplemental Bench Brief Regarding Jury Instruction on Reckless Conduct,
Filed October 23, 2007840

Affidavit of Byron V. Foster in Support of Plaintiffs’ Motion for New Trial,
Filed November 17, 2007869

VOLUME 6

Clerk’s Record on Appeal, Volume 6 1049

Supplemental Table of Contents, Volume 6 1050

Supplemental Index, Volume 6 1052

Register of Action, Printed September 11, 2008 1054

Defendant Thomas J. Byrne’s Memorandum in Opposition to Plaintiffs’ Motion for New Trial,
Filed December 3, 20071071

Affidavit Keely E. Duke in Support of Thomas J. Byrne’s Memorandum in Opposition to Plaintiffs’
Motion for New Trial, Filed December 3, 20071097

Affidavit of Steven J. Hippler in Support of Clinton Dille and the Southern Idaho Pain Institute’s
Response to Plaintiffs’ Motion for New Trial, [ending with exhibit C], Filed December 3, 20071168

VOLUME 7

Clerk’s Supplemental Record on Appeal, Volume 7 1275

Supplemental Table of Contents, Volume 7 1276

Supplemental Index, Volume 7 1278

Register of Action, Printed September 11, 2008 1280

Affidavit of Steven J. Hippler in Support of Clinton Dille and the Southern Idaho Pain Institute’s
Response to Plaintiffs’ Motion for New Trial, [starting with exhibit D], Filed December 3, 20071297

Supplemental Index

VOLUME 1

Clerk’s Supplemental Record on Appeal, Volume 1 1

Defendant Thomas J. Byrne’s Disclosure of Expert Witnesses, Filed June 18, 2007152

Plaintiff’s Expert Witness Disclosures, Filed April 20, 2007.....23

Register of Action, Printed September 11, 2008 6

Supplemental Index, Volume 1 4

Supplemental Table of Contents, Volume 1 2

VOLUME 2

Affidavit of Counsel in Support of Defendant Thomas Byrne, P.A.’s Motion in Limine RE:
Various Issues, Filed September 27, 2007243

Affidavit of J. Will Varin in Support of Clinton Dille and The Southern Idaho Pain Institute’s Motions in
Limine, Filed October 1, 2007289

Affidavit of J. Will Varin in Support of Clinton Dille and The Southern Idaho Pain Institute’s Response to
Plaintiffs’ Motion in Limine, Filed October 5, 2007 365

Clerk’s Supplemental Record on Appeal, Volume 2 221

Defendants Clinton Dille, M.D. and Southern Idaho Pain Institutes’ Memorandum in
Support of Motions in Limine, Filed October 1, 2007315

Memorandum in Support of Thomas J. Byrne’s Motion in Limine Re: Various Issues,
Filed October 1, 2007341

Register of Action, Printed September 11, 2008 226

Supplemental Index, Volume 2 224

Supplemental Table of Contents, Volume 2..... 222

VOLUME 3

Affidavit of Byron Foster in Support of Plaintiffs' Pretrial Memorandum, Filed October 9, 2007	454
Clerk's Supplemental Record on Appeal, Volume 3	432
Defendant Clinton Dille M.D. and Southern Idaho Pain Institute's Trial Brief, Filed October 10, 2007	602
Defendant Thomas J. Byrne, P.A.'s Proposed Jury Instructions, Filed October 9, 2007	562
Plaintiffs' Proposed Jury Instructions, Filed October 9, 2007	501
Register of Action, Printed September 11, 2008	437
Supplemental Index, Volume 3	435
Supplemental Table of Contents, Volume 3	433

VOLUME 4

Affidavit of Chris D. Comstock Regarding the Parties' Motions in Limine, Filed October 15, 2007	733
Clerk's Supplemental Record on Appeal, Volume 4	627
Defendants Clinton Dille M.D. and Southern Idaho Pain Institute's Jury Instructions, Filed October 10, 2007	649
Register of Action, Printed September 11, 2008	632
Supplemental Index, Volume 4	630
Supplemental Table of Contents, Volume 4	628

VOLUME 5

Affidavit of Byron V. Foster in Support of Plaintiffs' Motion for New Trial, Filed November 17, 2007	869
---	-----

Clerk's Supplemental Record on Appeal, Volume 5	818
Register of Action, Printed September 11, 2008	823
Supplemental Bench Brief Regarding Jury Instruction on Reckless Conduct, Filed October 23, 2007	840
Supplemental Index, Volume 5	821
Supplemental Table of Contents, Volume 5	819

VOLUME 6

Affidavit Keely E. Duke in Support of Thomas J. Byrne's Memorandum in Opposition to Plaintiffs' Motion for New Trial, Filed December 3, 2007	1097
Affidavit of Steven J. Hippler in Support of Clinton Dille and the Southern Idaho Pain Institute's Response to Plaintiffs' Motion for New Trial, [ending with exhibit C], Filed December 3, 2007	1168
Clerk's Record on Appeal, Volume 6	1049
Defendant Thomas J. Byrne's Memorandum in Opposition to Plaintiffs' Motion for New Trial, Filed December 3, 2007	1071
Register of Action, Printed September 11, 2008	1054
Supplemental Index, Volume 6	1052
Supplemental Table of Contents, Volume 6	1050

VOLUME 7

Affidavit of Steven J. Hippler in Support of Clinton Dille and the Southern Idaho Pain Institute's Response to Plaintiffs' Motion for New Trial, [starting with exhibit D], Filed December 3, 2007	1297
Clerk's Supplemental Record on Appeal, Volume 7	1275
Register of Action, Printed September 11, 2008	1280
Supplemental Index, Volume 7	1278
Supplemental Table of Contents, Volume 7	1276

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
10/3/2005	NOAP	QUAM	Notice Of Appearance
		QUAM	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Mick Hodges Receipt number: 5024920 Dated: 10/3/2005 Amount: \$82.00 (Check)
	COMP	QUAM	Complaint Filed
	SMIS	QUAM	Summons Issued x 3
11/7/2005		QUAM	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Givens Pursley, LLP Receipt number: 5027934 Dated: 11/7/2005 Amount: \$52.00 (Check)
		QUAM	Answer To Complaint And Demand For Jury Trial
12/14/2005	ANSW	QUAM	
	HRSC	COOPE	Hearing Scheduled (Scheduling Conference 01/04/2006 01:30 PM)
	OSCO	COOPE	Order for Scheduling Conference and Order RE: Motion Practice
12/19/2005	LETT	COOPE	Letter from David Comstock
12/21/2005	HRVC	COOPE	Hearing result for Scheduling Conference held on 01/04/2006 01:30 PM: Hearing Vacated
12/30/2005	AFSV	NIELSEN	Affidavit Of Service
	SMRT	NIELSEN	Summons Returned
1/5/2006		FERCH	Filing: I7A - Civil Answer Or Appear. All Other Actions No Prior Appearance Paid by: Hall Farley Oberrecht Blanton Receipt number: 6000440 Dated: 1/5/2006 Amount: \$52.00 (Check)
		FERCH	Notice Of Appearance
	ANSW	FERCH	Defendant Thomas J Byrne's Answer to plaintiffs complaint and demand for jury trial
	SMRT	NIELSEN	Summons Returned Clinton Dille, M.D.
1/20/2006	SMRT	NIELSEN	Summons Returned Southern Idaho Pain Institute
2/6/2006	NOSV	NIELSEN	Notice Of Service
2/14/2006	HRSC	COOPE	Hearing Scheduled (Scheduling Conference 03/06/2006 01:30 PM)
2/15/2006	OSCO	COOPE	Order for Scheduling Conference and Order RE: Motion Practice
2/24/2006	NTSD	NIELSEN	Notice Of Service Of Discovery Documents
3/2/2006	STIP	COOPE	Stipulation for Scheduling and Planning
3/8/2006	HRVC	COOPE	Hearing result for Scheduling Conference held on 03/06/2006 01:30 PM: Hearing Vacated
	HRSC	COOPE	Hearing Scheduled (Jury Trial 10/16/2007 09:00 AM) Excluding Mondays
	HRSC	COOPE	Hearing Scheduled (Civil Pretrial Conference 09/24/2007 02:30 PM)

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
3/8/2006	HRSC	COOPE	Hearing Scheduled (Status/ADR 09/05/2007 01:32 PM)
3/9/2006	NOJT	COOPE	Notice Of Jury Trial Setting, Pretrial Conf- Rence And Order Governing Further Proceedings
4/3/2006	NOTR	NIELSEN	Notice Of Preparation Of Transcript
4/6/2006	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Defendant Clinton Dille, M.D.
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Thomas Byrne, PA
4/18/2006	NOSV	NIELSEN	Notice Of Service 04-17-06
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Amber Zaccone
5/1/2006	NOTC	RKLINE	Amended Notice Of Taking Video Deposition Duces Tecum Of Thomas Byrne, PA
	NOTC	RKLINE	Amended Notice Of Taking Video Deposition Duces Tecum Of Defendant Clinton Dille, M.D.
5/10/2006	NTSD	NIELSEN	Notice Of Service Of Discovery Documents
6/9/2006	NOTR	NIELSEN	Notice Of Preparation Of Transcript
	NOTR	NIELSEN	Notice Of Preparation Of Transcript
	NOTR	NIELSEN	Notice Of Preparation Of Transcript
6/19/2006	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum (Timothy Floyd, M.D.)
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum (Julian Nicholson, M.D.)
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum (Records Custodian-Sun Valley Spine Institute)
3/26/2006	NODT	NIELSEN	Amended Notice Of Deposition Duces Tecum (Julian Nicholson, M.D.)
	NODT	NIELSEN	Amended Notice Of Deposition Duces Tecum (Records Custodian - Sun Valley Spine Institute)
3/30/2006	NTSD	NIELSEN	Notice Of Service Of Discovery Documents
7/3/2006	SUBR	NIELSEN	Subpoena Returned
	AFSV	NIELSEN	Affidavit Of Service
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum (Records Custodian - Spine Institute of Idaho)
	SUBR	NIELSEN	Subpoena Returned
	AFFD	NIELSEN	Affidavit of Non-Service
7/13/2006	NOSV	MCMULLEN	Notice Of Service
7/14/2006	NOSV	NIELSEN	Notice Of Service
	NOSV	NIELSEN	Notice Of Service
7/17/2006	NTSD	NIELSEN	Notice Of Service Of Discovery Responses
	NTSD	NIELSEN	Notice Of Service Of Discovery Responses

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
7/25/2006	SUBR	NIELSEN	Subpoena Returned
	AFFD	NIELSEN	Affidavit of Non-Service
9/8/2006	NTSD	NIELSEN	Notice Of Service Of Discovery Documents
9/29/2006	NOSV	NIELSEN	Notice Of Service
4/19/2007	MOTN	NIELSEN	Motion for Leave to Amend Complaint to Include Claim for Punitive Damages fax
4/20/2007	AFFD	NIELSEN	Supplemental Affidavit of Arthur G. Lipman, Pharm.D.
	AFFD	NIELSEN	Affidavit of Arthur G. Lipman, Pharm.d.
	MEMO	NIELSEN	Memorandum in Support of Plaintiffs' Motion for Leave to Amend Complaint to Include Claim for Punitive Damages
4/26/2007		NIELSEN	Plaintiffs' Expert Witness Disclosures
	HRSC	COOPE	Hearing Scheduled (Motion 06/18/2007 09:00 AM) to amend complaint to add punitive damages
	NOHG	NIELSEN	Notice Of Hearing Re: Motion for Leave to Amend Complaint to Include Claim for Punitive Damages
5/11/2007	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Kimberly Vorse, M.D.
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of David Verst, M.D.
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum \$of Juanita Peterson
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Carl Peterson
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Cindy Sheer
5/18/2007		NIELSEN	Defendant Thomas Byrne, P.A.'s Disclosure of Lay Witnesses
5/23/2007		NIELSEN	Plaintiffs' Lay Witness List fax
5/24/2007	NOSV	NIELSEN	Notice Of Service
	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Carl Peterson
	NOTC	NIELSEN	Notice of Vacating Deposition Duces Tecum of Juanita Peterson
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Kenneth Harris, M.D.
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Julian Nicholson, M.D.
	NODT	NIELSEN	amended Notice Of Taking Deposition Duces Tecum of Cindy Sheer

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User		Judge
5/24/2007	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Kent Jensen	G. Richard Bevan
5/25/2007		NIELSEN	DefendantThomasByrne,P.a.'sSupplemental Disclosure of Lay Witnesses fax	G. Richard Bevan
5/30/2007	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Kimberly Vorse, M.D. Fax	G. Richard Bevan
6/4/2007	AFFD	NIELSEN	Second Supplemental Affidavit of Arthur G. Lipman, Pharm.D.	G. Richard Bevan
	NOHG	NIELSEN	Notice Of Hearing	G. Richard Bevan
	AFFD	NIELSEN	Affidavit of Counsel in Support of Defendant Thomas Byrne's Motion to Strike Portions of the Affidavits of Arthur G. Lipman, Pharm. D.	G. Richard Bevan
	MOTN	NIELSEN	Defendant Thomas Byrne's Motion to Strike Portions of the Affidavits of Arthur G. Lipman, Pharm.D.	G. Richard Bevan
	AFFD	NIELSEN	Affidavit of Keri Fakata, Pharm.D	G. Richard Bevan
		NIELSEN	Defendant Thomas Byrne's Memorandum in Support of Motion to Strike Portions of the Affidavits of Arthur G. Lipman, Pharm.D.	G. Richard Bevan
6/6/2007		NIELSEN	Defendant Clinton Dille, M.D.'s Joinder in Motion to Strike Portions of the Affidavit of Arthur G. Lipman Pharm. D. fax	G. Richard Bevan
6/11/2007	AFFD	NIELSEN	Affidavit of Byron V. Foster	G. Richard Bevan
	AFFD	NIELSEN	Affidavit of Lorraine Shoafkadish BSN, RN	G. Richard Bevan
	MEMO	NIELSEN	Plaintiff's Memorandum in Opposition to Defendants' Motion to Strike Portions of the Affidavits of Arthur G. Lipman, Pharm.D.	G. Richard Bevan
	AFFD	NIELSEN	Affidavit of William Binegar, M.D. in Opposition to Plaintiffs' Motion to Amend Complaint to Add a Claim for Punitive Damages fax	G. Richard Bevan
		NIELSEN	Response to Plaintiffs' Motion for Leave to Amend Complaint to Include Claim for Punitive Damages fax	G. Richard Bevan
	AFFD	NIELSEN	Affidavit of Counsel in Support of Defendant Thomas Byrne, P.A.'s Memorandum in Opposition to Plaintiffs' Motion for Leave to Amend Complaint to Include Claim for Punitive Damages	G. Richard Bevan
	AFFD	NIELSEN	Affidavit of Rodde Cox, MD fax	G. Richard Bevan

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
6/11/2007		NIELSEN	Defendant Thomas Byrne, P.A.'s Memorandum in Opposition to Plaintiffs' Motion for Leave to Amend Complaint to Include Claim for Punitive Damages
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Stephen P. Lordon, M.D.
6/12/2007	AFFD	NIELSEN	Affidavit of Steven J. Hippler
	AFFD	NIELSEN	Affidavit of Bradford Hare, M.D.PH.D in Opposition to Plaintiffs' Motion to Amend Complaint to Add a Claim for Punitive Damages
6/13/2007	NOWD	NIELSEN	Notice Of Withdrawal of Plaintiff's Motion for Leave to Amend Complaint to Include Claim for Punitive Damages
6/14/2007	HRVC	COOPE	Hearing result for Motion held on 06/18/2007 09:00 AM: Hearing Vacated to amend complaint to add punitive damages motion to strike portions of affidavits of Arthur Lipman
	NOTC	NIELSEN	Notice of Vacating Deposition Duces Tecum of Carl Peterson fax
6/15/2007	NOTC	NIELSEN	Notice Vacating Hearing fax
	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Cindy Scheer fax
	NOTC	COOPE	Notice Vacating Hearing fax
6/18/2007		NIELSEN	Plaintiffs' First Supplemental Expert Witness Disclosures
		NIELSEN	Defendant Thomas J. Byrne's Disclosure of Expert Witnesses
	NOTC	NIELSEN	Notice of Compliance fax
	NOTC	COOPE	Notice of Vacating Hearing
6/19/2007	NTSD	NIELSEN	Notice Of Service Of Discovery Documents
6/25/2007	SUBR	NIELSEN	Subpoena Returned fax
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Dennis Chambers fax
	RETN	NIELSEN	Return Of Service 6-16-7 fax
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum fax

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
6/27/2007	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Arthur G. Lipman, Pharm. D. fax
	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Stephen P. Lordon, M.D. fax
	NODT	NIELSEN	Second Amended Notice Of Taking Deposition Duces Tecum of Kimberly Vorse, M.D. fax
7/3/2007	MOTN	NIELSEN	Motion for Protective Order fax
7/20/2007	SUBR	NIELSEN	Subpoena Returned
7/23/2007	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing
	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing
	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing
	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing
8/2/2007	NTSD	NIELSEN	Notice Of Service Of Discovery Documents
8/3/2007	NTSD	NIELSEN	Notice Of Service Of Discovery Documents
	NTSD	NIELSEN	Notice Of Service Of Discovery Documents
	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Cornelius Hofman
8/6/2007	NOTC	NIELSEN	Notice of Vacating Deposition Duces Tecum of Dennis Chambers
	NOTC	NIELSEN	Notice of Vacating Deposition Duces Tecum of Shaiyenne Shindle
	NOSV	NIELSEN	Notice Of Service
	NOSV	NIELSEN	Notice Of Service
	NODT	NIELSEN	Second Amended Notice Of Taking Deposition Duces Tecum of Stephen P. Lordon, M.D. (Change of Location)
8/13/2007	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Jim Keller, M.P.H., PA-C
	NODT	NIELSEN	Second Amended Notice Of Taking Deposition Duces Tecum of Arthur G. Lipman, Pharm. D.
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Glen R. Groben
	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Glen R. Groben
	NODT	NIELSEN	Second Amended Notice Of Taking Deposition Duces Tecum of Glen R. Groben
	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing
8/22/2007	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Dennis Chambers fax

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User		Judge
8/22/2007	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Christopher Frey fax	G. Richard Bevan
	NODT	NIELSEN	Amended Notice Of Taking Deposition Duces Tecum of Shaiyenne Shindle fax	G. Richard Bevan
8/27/2007	NTSD	NIELSEN	Notice Of Service Of Discovery Documents	G. Richard Bevan
8/29/2007	CONT	COOPE	Continued (Status/ADR 09/10/2007 11:00 AM) by phone with plaintiff's counsel to initiate	G. Richard Bevan
		COOPE	Notice Of Hearing	G. Richard Bevan
	NOSV	NIELSEN	Notice Of Service	G. Richard Bevan
8/30/2007	NTSD	NIELSEN	Notice Of Service Of Discovery Responses	G. Richard Bevan
9/10/2007		NIELSEN	Plaintiffs' Second Supplemental Expert Witness Disclosures	G. Richard Bevan
	HRHD	COOPE	Hearing result for Status/ADR held on 09/10/2007 11:00 AM: Hearing Held by phone with plaintiff's counsel to initiate	G. Richard Bevan
	LETT	COOPE	Letter from Byron Foster	G. Richard Bevan
	CMIN	COOPE	Court Minutes Hearing type: Status/ADR Hearing date: 9/10/2007 Time: 11:03 am Court reporter: Virginia Bailey	G. Richard Bevan
9/11/2007	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing	G. Richard Bevan
		NIELSEN	Plaintiffs' Third Supplemental Expert Witness Disclosures fax	G. Richard Bevan
9/12/2007	NTSD	NIELSEN	Notice Of Service Of Discovery Documents	G. Richard Bevan
	NTSD	NIELSEN	Notice Of Service Of Discovery Documents	G. Richard Bevan
	NOSV	NIELSEN	Notice Of Service fax	G. Richard Bevan
	NOSV	NIELSEN	Notice Of Service fax	G. Richard Bevan
	NOSV	NIELSEN	Notice Of Service fax	G. Richard Bevan
9/14/2007	NOSV	NIELSEN	Notice Of Service	G. Richard Bevan
9/17/2007	NTSD	NIELSEN	Notice Of Service Of Discovery Documents	G. Richard Bevan
9/24/2007	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Marty Bright fax	G. Richard Bevan
	NODT	NIELSEN	Notice Of Taking Deposition Duces Tecum of Valerie Bothoff fax	G. Richard Bevan

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
9/24/2007	NODT	NIELSEN	Second Amended Notice Of Taking Deposition Duces Tecum of Christopher Frey fax
	HRHD	COOPE	Hearing result for Civil Pretrial Conference held on 09/24/2007 02:30 PM: Hearing Held in Chambers
		NIELSEN	Defendant Thomas Byrne, P.A.'s Exhibit List fax
	MISC	COOPE	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute Trial Exhibit List
	MISC	COOPE	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Trial Witness List
9/25/2007	ORDR	COOPE	Pretrial Conference Order Pursuant to I.R.C.P. 16(d)
9/26/2007	MOTN	NIELSEN	Plaintiffs' Motion in Limine fax
	MEMO	NIELSEN	Memorandum in Support of Plaintiffs' Motion in Limine fax
	WITN	NIELSEN	Defendant Thomas Byrne, P.A.'s Witness List fax
	WITN	NIELSEN	Plaintiffs' Witness List fax
		NIELSEN	Plaintiffs' Exhibit List fax
9/27/2007	AFFD	NIELSEN	Affidavit of Counsel in Support of Defendant Thomas Byrne, P.A.'s Motion in Limine Re: Various Issues
9/28/2007	MOTN	NIELSEN	Defendant Clinton Dille, M.D. and Southern Idaho Pain Institutes' Motions in Limine fax
10/1/2007	MEMO	NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institutes' Memorandum in Support of Motions in Limine
	MEMO	NIELSEN	Memorandum in Support of Thomas J. Byrne's Motion in Limine Re: Various Issues
	AFFD	NIELSEN	Affidavit of J. Will Varin in Support of Clinton Dille and the Southern Idaho Pain Institute's Motions in Limine
	NOSV	NIELSEN	Notice Of Service fax
10/2/2007	HRSC	COOPE	Hearing Scheduled (Motion 10/11/2007 10:00 AM) Pretrial
10/3/2007	AFFD	NIELSEN	Affidavit of Counsel in Support of Defendant Thomas Byrne's Motion to Quash Subpoenas Duces Tecum fax

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
10/3/2007	MEMO	NIELSEN	Defendant's Memorandum in Support of Motion to Quash Subpoenas Duces Tecum fax
	MOTN	NIELSEN	Defendant's Motion to Quash Subpoenas Duces Tecum fax
10/4/2007	MOTN	NIELSEN	Defendant's Motion to Shorten Time fax
	NOHG	NIELSEN	Notice Of Hearing fax
		NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Response to Plaintiffs' Motion in Limine fax
	AFFD	NIELSEN	Affidavit of Counsel in Support of Defendant Thomas Byrne's Memorandum in Opposition to Plaintiffs' Motion in Limine fax
	MEMO	NIELSEN	Defendant Thomas J. Byrne's Memorandum in Opposition to Plaintiffs' Motion in Limine fax
	MOTN	NIELSEN	Defendant Thomas Byrne, P.A.'s Joinder in Clinton Dille, M.D. and Southern Idaho Pain Institute's Motion in Limine fax
		NIELSEN	Amended Plaintiffs' Exhibit List fax
10/5/2007	MEMO	NIELSEN	Memorandum in Response to Defendant's Motions in Limine
	MEMO	NIELSEN	Memorandum in Opposition to Defendant's Motion to Quash Subpoenas Duces Tecum
	AFFD	NIELSEN	Affidavit of Byron V. Foster
	AFFD	NIELSEN	Affidavit of J. Will Varin in Support of Clinton Dille' and the Southern Idaho Pain Institute's Response to Plaintiffs' Motion in Limine
		NIELSEN	Defendant Thomas J. Byrne's Supplemental Disclosure of Expert Witnesses fax
		NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Joinder in Defendant Byrne's Motion to Quash and Response to Plaintiffs' Opposition to Motion to Quash fax
		NIELSEN	Plaintiffs' Fourth Supplemental Expert Witness Disclosure fax
	SUBR	NIELSEN	Subpoena Returned
	AFSV	NIELSEN	Affidavit Of Service

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
10/9/2007	HRSC	COOPE	Hearing Scheduled (Hearing Scheduled 10/11/2007 09:30 AM)
	MEMO	NIELSEN	Pretrial Memorandum
	AFFD	NIELSEN	Affidavit of Byron V. Foster in Support of Plaintiffs' Pretrial Memorandum
	MEMO	NIELSEN	Reply Memorandum in Support of Plaintiffs' Motion in Limine
		NIELSEN	Plaintiff's Proposed Jury Instructions
		NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Reply to Plaintiffs' Response to Defendants' Motions in Limine
		NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Joinder in Defendant Byrne's Motion in Limine
		NIELSEN	Defendant Thomas J. Byrne, P.A.'s Proposed Spcial Verdict Form
		NIELSEN	Defendant Thomas J. Byrne's Trial Brief
		NIELSEN	Defendant Thomas J. Byrne, P.A.'s Proposed Jury Instructions
10/10/2007	RSPN	COOPE	Defendant's Thomas Bryne, P.A.'s Joinder in Clinton Dille, M.D. and Southern Idaho Pain Institute's Reply to Plaintiff's Reponse to Defendants' Motions in Limine
		NIELSEN	Defendants' Joint Exhibit List fax
		NIELSEN	Defendant Clinton Dille' M.D. and Southern Idaho Pain Institute's Trial Brief
		NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Jury Instructions
10/11/2007	CMIN	COOPE	Court Minutes Hearing type: Motion in Limines Hearing date: 10/11/2007 Time: 10:07 am Court reporter: Virginia Bailey
	CMIN	COOPE	Court Minutes Hearing type: Jury Numbering Hearing date: 10/11/2007 Time: 9:42 am Court reporter: Virginia Bailey
	NOSV	NIELSEN	Notice Of Service fax
	MISC	COOPE	Jury Seating Chart
	MISC	COOPE	Jury Seating Chart (Hand written)
	HRHD	COOPE	Hearing result for Hearing Scheduled held on 10/11/2007 09:30 AM: Hearing Held
	HRHD	COOPE	Hearing result for Motion held on 10/11/2007 10:00 AM: Hearing Held Pretrial
	JTST	COOPE	Hearing result for Jury Trial held on 10/16/2007 09:00 AM: Jury Trial Started Excluding Mondays

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
10/12/2007		NIELSEN	Pocket Trial Brief Re: Hearsay Issue and Mrs. Schmechel's Identification of Mr. Byrne fax
		NIELSEN	Supplemental Trial Memorandum Re: Dr. Lipman fax
		NIELSEN	Second Supplemental Trial Memorandum Re: Plaintiffs' Expert Jim Keller fax
10/15/2007	AFFD	NIELSEN	Affidavit of Chris D. Comstock Regarding the Parties' Motions in Limine
		NIELSEN	Pocket Trial Brief Re: Hearsay Issue and Mrs. Schmechel's Identification of Mr. Byrne
	MEMO	NIELSEN	Supplemental Trial Memorandum Re: Dr. Lipman
		NIELSEN	Second Supplemental Trial Memorandum Re: Plaintiffs' Expert Jim Keller
		NIELSEN	Defendant Thomas J. Byrne's Reply to Plaintiffs' Pocket Trial Brief Re: Hearsay Issue and Mrs. Schmechel's Identification of Mr. Byrne fax
	JUIN	COOPE	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's First Supplement Jury Instructions
10/16/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Day 1 Hearing date: 10/16/2007 Time: 9:18 am Court reporter: Virginia Bailey
	MISC	COOPE	Juror Questions Submitted by Defendants Dille and Southern Idaho Pain Institute (in envelope with answers)
	MISC	COOPE	Jury Roll Call
	MISC	COOPE	Peremptory Challenges
	MISC	COOPE	Potential Jury Panel
	ORDR	COOPE	Order Re: Motions in Limine
10/17/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Day 2 Hearing date: 10/17/2007 Time: 8:45 am Court reporter: Virginia Bailey
	MISC	COOPE	Preliminary Jury Instructions
	MISC	COOPE	Final Jury Panel
10/18/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Day 3 Hearing date: 10/18/2007 Time: 9:09 am Court reporter: Virginia Bailey Audio tape number: ct rm 1
	JUIN	COOPE	Plaintiff's First Supplemental Proposed Jury Instructions Filed
10/19/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Day 4 Hearing date: 10/16/2007 Time: 9:00 am Court reporter: Virginia Bailey

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
10/19/2007	BREF	COOPE	Plaintiffs' Bench Brief RE: Proposed "Reckless" Instruction
	OBJC	COOPE	Plaintiffs' Objections to the Defendant's Proposed Jury Instructions
10/23/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Day 5 Hearing date: 10/23/2007 Time: 9:00 am Court reporter: Virginia Bailey
	BREF	COOPE	Supplemental Bench Brief Regarding Jury Instruction on Reckless Conduct
10/24/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Hearing date: 10/24/2007 Time: 9:00 am Court reporter: Virginia Bailey
10/25/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Day 7 Hearing date: 10/25/2007 Time: 9:10 am Court reporter: Virginia Bailey
	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing
	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing
10/26/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Day 8 Hearing date: 10/26/2007 Time: 9:10 am Court reporter: Virginia Bailey
	JUIN	COOPE	Plaintiffs' Second Supplemental Proposed Jury Instructions Filed
	OBJC	COOPE	Defendants' Joint Objections to Plaintiffs' Proposed Jury Instructions
10/30/2007	CMIN	COOPE	Court Minutes Hearing type: Jury Trial Day 9 Hearing date: 10/30/2007 Time: 8:47 am Court reporter: Virginia Bailey
	MISC	COOPE	Final Jury Instructions
	OBJC	COOPE	Defendants' Joint Objections to Court's Proposed Final Jury Instructions
	OBJC	COOPE	Defendants' Objectionto Plaintiffs' Proposed Rebuttal Testimony of Dr. Lipman
	MISC	COOPE	Declaration of Counsel in Support of Defendants' Objection to Proposed Rebuttal Testimony of Dr. Lipman
	MISC	COOPE	Special Verdict Form
10/31/2007	LETT	COOPE	Letter from Comstock and Bush
11/5/2007	JDMT	COOPE	Judgment
11/9/2007	JDMT	COOPE	Judgment
	CDIS	COOPE	Civil Disposition/Judgment entered: entered for: Byrne, Thomas J PA, Defendant; Dille, Clinton L MD, Defendant; Doe, John, Defendant; Jane Doe I -x,, Defendant; Southern Idaho Pain Institute, Defendant; Hall, Tamara, Plaintiff; Howard, Kim Lee, Plaintiff; Lewis, Robert P, Plaintiff; Schmechel, Vaughn, Plaintiff. Filing date: 11/9/2007

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
11/14/2007	AFFD	NIELSEN	Affidavit of Counsel in Support of Memorandum of Costs
	MOTN	NIELSEN	Defendant Thomas Byrne, P.A.'s Motion for Costs
	MEMO	NIELSEN	Defendant Thomas J. Byrne's Verified Memorandum of Costs
11/19/2007	MOTN	NIELSEN	Plaintiffs' Motion for New Trial
	MEMO	NIELSEN	Memorandum in Support of Plaintiffs' Motion for New Trial
	AFFD	NIELSEN	Affidavit of Byron V. Foster in Support of Plaintiffs' Motion for New Trial
11/20/2007	HRSC	COOPE	Hearing Scheduled (Motion for Attorney fees and Costs 12/17/2007 09:00 AM)
	HRSC	COOPE	Hearing Scheduled (Motion 12/17/2007 09:00 AM) for new trial -- Comstock
11/21/2007	NOHG	NIELSEN	Notice Of Hearing re: Motion for New Trial fax
	ORDR	COOPE	Order Returning Property to Investigating Law Enforcement Agency
11/23/2007	MOTN	NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Motion for Costs
	MEMO	NIELSEN	Verified Memorandum of Costs
11/26/2007		NIELSEN	Defendant Thomas J. Byrne's Amended Verified Memorandum of Costs
	NOHG	NIELSEN	Notice Of Hearing fax
11/28/2007	OBJC	NIELSEN	Plaintiffs' Objections to Defendant Thomas J. Byrne's Verified Memorandum of Costs
11/30/2007	NOHG	NIELSEN	Notice Of Hearing
12/3/2007		NIELSEN	Defendant Thomas J. Byrne's Memorandum in Opposition to Plaintiffs' Motion for New Trial
	AFFD	NIELSEN	Affidavit Keely E. Duke in Support of Thomas J. Byrne's Memorandum in Opposition to Plaintiffs' Motion for New Trial
		NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Response to Plaintiffs' Motion for New Trial
	AFFD	NIELSEN	Affidavit of Steven J. Hippler in Support of Clinton Dille and the Southern Idaho Pain Institute's Response to Plaintiffs' Motion for New Trial
12/4/2007	OBJC	NIELSEN	Plaintiffs' Objections to Defendant Clinton Dille, M.D. and Southern Idaho Pain Institute's Verified Memorandum of Costs fax
12/13/2007		NIELSEN	Defendant Thomas J. Byrne's Reply Memorandum in Support of Motion for Costs

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
12/13/2007	MEMO	NIELSEN	Reply Memorandum in Support of Plaintiffs' Motion for New Trial G. Richard Bevan
12/14/2007	AFFD	NIELSEN	Affidavit of J. Will Varin in Support of Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Reply to Plaintiffs' Objections to Defendants Verified Memorandum of Costs G. Richard Bevan
	MEMO	NIELSEN	Amended Verified Memorandum of Costs G. Richard Bevan
		NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Reply to Plaintiffs' Objections to Defendants Verified Memorandum of Costs G. Richard Bevan
12/17/2007	CMIN	COOPE	Court Minutes Hearing type: Motion for New trial and motion for atty fees Hearing date: 12/17/2007 Time: 9:00 am Court reporter: Virginia Bailey G. Richard Bevan
	HRHD	COOPE	Hearing result for Motion held on 12/17/2007 09:00 AM: Hearing Held for new trial -- Comstock G. Richard Bevan
	HRHD	COOPE	Hearing result for Motion for Attorney fees and Costs held on 12/17/2007 09:00 AM: Hearing Held Dille and Bryne G. Richard Bevan
1/23/2008	OPIN	COOPE	Memorandum Opinion and Order RE: Plaintiffs' Motion for New Trial G. Richard Bevan
1/24/2008	OPIN	COOPE	Memorandum Decision and Order RE: Defendants' Motions for Costs G. Richard Bevan
2/14/2008	JDMT	COOPE	Amended Judgment G. Richard Bevan
	JDMT	COOPE	Judgment Nunc Pro Tunc G. Richard Bevan
3/3/2008	MISC	COOPE	Estimate Cost of Reporter's Transcript 2100 pages G. Richard Bevan
3/5/2008	NTOA	COOPE	Notice Of Appeal G. Richard Bevan
	CCOA	COOPE	Clerk's Certificate Of Appeal G. Richard Bevan
		COOPE	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: Comstock, David E. (attorney for Schmechel, Vaughn) Receipt number: 8006054 Dated: 3/5/2008 Amount: \$15.00 (Check) For: Schmechel, Vaughn (plaintiff) G. Richard Bevan
		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Comstock and Bush Receipt number: 8006055 Dated: 3/5/2008 Amount: \$70.00 (Check) G. Richard Bevan
		COOPE	Miscellaneous Payment: Record Covers For Appeals Paid by: Comstock and Bush Receipt number: 8006055 Dated: 3/5/2008 Amount: \$30.00 (Check) G. Richard Bevan
3/14/2008	SCDF	COOPE	Supreme Court Document Filed- Copy of Filing Fee Receipt G. Richard Bevan

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
3/14/2008	SCDF	COOPE	Supreme Court Document Filed- Filing of Clerk's Certificate
	SCDF	COOPE	Supreme Court Document Filed- Notice of Appeal (T)
3/17/2008	REQU	COOPE	Defendant Thomas J. Bryne, P.A.'s Request for Additional Transcript and Record
	REQU	COOPE	Defendants Clinton Dille M.D. and Southern Idaho Pain Institute's Request for Additional Transcripts and Records
3/18/2008	CCOA	COOPE	Amended Clerk's Certificate Of Appeal
3/24/2008	SCDF	COOPE	Supreme Court Document Filed- Order Granting Court Reporter's Motion for Extension of Time
	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record & Transcript Due Date Reset
3/28/2008	SCDF	COOPE	Supreme Court Document Filed- Document(s)
4/2/2008	AFFD	NIELSEN	Affidavit of Byron W. Foster fax
	MOTN	NIELSEN	Plaintiff's Motion to Extend Automatic Stay fax
	AFFD	NIELSEN	Affidavit of Taylor L. Mossman fax
4/8/2008		NIELSEN	Defendants Clinton Dille', M.D. and Southern Idaho Pain Institute's Objection to Plaintiffs' Motion to Extend Automatic Stay fax
	AFFD	NIELSEN	Affidavit of Steven J. Hippler in Support of Defendants' Objection to Plaintiffs' Motion to Extend Automatic Stay fax
4/9/2008		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Givens Pursley Receipt number: 8009231 Dated: 4/9/2008 Amount: \$100.00 (Check)
5/8/2008	HRSC	COOPE	Hearing Scheduled (Motion 05/28/2008 02:00 PM) to stay execution and bond in interesting bearing acct., by phone
	NOTC	COOPE	Plaintiff's Notice of Posting of Cash Bond
	MOTN	COOPE	Plaintiff's Motion to Stay Execution of Judgment Pending the Appeal
	BNDC	COOPE	Bond Posted - Cash (Receipt 8011835 Dated 5/8/2008 for 35603.64)
5/12/2008	OBJC	NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Objection to Plaintiffs' Motion to Stay Execution of Judgment Pending the Appeal
	NOHG	COOPE	Notice Of Telephonic Hearing RE: Plaintiffs' Motion to Stay Execution of Judgment Pending the Appeal and Notice of Posting Cash Bond

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
5/21/2008		NIELSEN	Thomas Byrne, P.A.'s Joinder in Defendants Clinton Dille, M.D. and Souther Idaho Pain Institute's Objection to Plaintiffs' Motion to Stay Execution of Judgment Pending the Appeal fax
5/28/2008	CMIN	COOPE	Court Minutes Hearing type: Motion Hearing date: 5/28/2008 Time: 10:00 am Court reporter: Virginia Bailey Audio tape number: ct rm 1
	DCHH	COOPE	Hearing result for Motion held on 05/28/2008 02:00 PM: District Court Hearing Held Court Reporter: Number of Transcript Pages for this hearing estimated: to stay execution and bond in interest bearing acct., by phone
5/30/2008	ORDR	COOPE	Order Granting Plaintiffs' Motion to Stay Execution of Judgment Pending the Appeal
6/9/2008	SCDF	COOPE	Supreme Court Document Filed- Document
	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record and Transcript Due Date Reset
	SCDF	COOPE	Supreme Court Document Filed- Order Granting Court Reporter's Motion for Extension of Time
	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record & Transcript Due Date Reset
6/13/2008	NOTC	COOPE	Notice of Balance Due on Clerk's Record
	NOTC	COOPE	Notice of Balance Due on Clerk's Record
	NOTC	COOPE	Notice of Balance Due on Clerk's Record
6/24/2008		COOPE	Miscellaneous Payment: Personal Copy Fee Paid by: Comstaock and Bush Receipt number: 8016131 Dated: 6/24/2008 Amount: \$61.70 (Check)
		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Comstaock and Bush Receipt number: 8016131 Dated: 6/24/2008 Amount: \$291.25 (Check)
		COOPE	Miscellaneous Payment: Record Covers For Appeals Paid by: Comstaock and Bush Receipt number: 8016131 Dated: 6/24/2008 Amount: \$30.00 (Check)
		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Hall, Farley, Oberrecht & Blanton P.A. Receipt number: 8016139 Dated: 6/24/2008 Amount: \$269.00 (Check)
		COOPE	Miscellaneous Payment: Personal Copy Fee Paid by: Hall, Farley, Oberrecht & Blanton P.A. Receipt number: 8016140 Dated: 6/24/2008 Amount: \$6.90 (Check)

Vaughn Schmechel, Robert P Lewis, Kim Lee Howard, Tamara Hall vs. Clinton L Dille MD, Southern Idaho Pain Institute, Thomas J Byrne PA, John Doe, Jane Doe I -x

Date	Code	User	Judge
6/24/2008		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Hall, Farley, Oberrecht & Blanton P.A. Receipt number: 8016140 Dated: 6/24/2008 Amount: \$47.50 (Check)
		COOPE	Miscellaneous Payment: Personal Copy Fee Paid by: Givens Pursley Receipt number: 8016141 Dated: 6/24/2008 Amount: \$62.00 (Check)
		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Givens Pursley Receipt number: 8016141 Dated: 6/24/2008 Amount: \$211.25 (Check)
7/8/2008	LODG	COOPE	Lodged Transcript Volume 1
	LODG	COOPE	Lodged Transcript Volume 2
7/11/2008	SCDF	COOPE	Supreme Court Document Filed- Notice of Transcript Lodged
8/5/2008	OBJC	NIELSEN	Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Objection to Clerk's Record and Request for Additional Items
	OBJC	NIELSEN	Defendant Thomas J. Byrne's Joinder in Defendants Clinton Dille M.D. and Southern Idaho Pain Institute's Objection to Clerk's Record and Request for Additional Items fas
8/6/2008	HRSC	COOPE	Hearing Scheduled (Motion 09/03/2008 09:00 AM) Objection to clerk's record
8/7/2008	NOHG	NIELSEN	Notice Of Hearing
8/12/2008	SCDF	COOPE	Supreme Court Document Filed- Document (s)
	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record/Reporter's Trans. -Suspended-
8/22/2008	STIP	NIELSEN	Stipulation re: to Clerk's Record and Request for Additional Items
	ORDR	COOPE	Order RE: Objection to Clerk's Record and Request for Additional Items and Stipulation RE: Objection to Clerk's Record and Request for Additional Items
8/27/2008	HRVC	COOPE	Hearing result for Motion held on 09/03/2008 09:00 AM: Hearing Vacated Objection to clerk's record
	NOTC	COOPE	Notice of Balance due on Clerk's Record (Supplemental)
9/2/2008	SCDF	COOPE	Supreme Court Document Filed- Document(s)
	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record and Transcript Due Date Reset

ORIGINAL

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
PO Box 2774
Boise, Idaho 83701
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB # 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually, and
as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P
LEWIS, KIM HOWARD and TAMARA
HALL, natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A., and
JOHN DOE and JANE DOE, I through X,

Defendants.

DISTRICT COURT
TWIN FALLS, IDAHO
FILED

2007 OCT 23 AM 8:42

BY _____ CLERK

De _____ DEPUTY

Case No. CV 05-4345

**SUPPLEMENTAL BENCH BRIEF
REGARDING JURY INSTRUCTION ON
RECKLESS CONDUCT**

Come now the Schmechel Plaintiffs, by and through their counsel of record and hereby submit their Supplemental Bench Brief Regarding Jury Instruction on Reckless Conduct.

It is anticipated that Defendants will argue with regard to the Jury Instruction requested by Plaintiffs; that included within the definition of "Reckless Conduct" must be a statement that in order to fall within the definition, Plaintiffs must somehow prove that one or both of the Defendants evidenced a conscious disregard for the unreasonable risk of harm in which they placed Rosalie Schmechel. However, such is not the law of Idaho.

Plaintiffs have previously supplied the Court with a Bench Brief on this issue and now want to supplement that brief with some additional points and comments.

The issue of the wording of an instruction defining reckless conduct has been the subject of two recent Ada County medical malpractice cases. In both *Cramer v. Slater, et al*, Ada County Case No. CV OC 0602480 and *Jones, et al v. Anesthesiology Consultants of Treasure Valley, et al*, Ada County Case No. CV PI 0400486D; the exact same instruction requested by Plaintiffs herein was requested and given by The Honorable Michael R. McLaughlin (*Cramer, supra*) and The Honorable Ronald J. Wilper (*Jones, supra*). (See Judge Wilper's Memorandum Decision and Order, attached hereto as Exhibit "A.") (Also attached hereto as Exhibit "B" is the final instruction given by Judge McLaughlin in the Jones case).

In *Jones, supra*, in his Memorandum Decision and Order regarding Defendants motions for new trial, Judge Wilper stated the following with regard to the "reckless" instruction:

"The Motion for New Trial filed by Defendant Jenkins and joined by Defendant ACTV alleges that the Court erroneously instructed the jury regarding the definition of recklessness. If a jury is given an inaccurate instruction misstating the law and a party has been prejudiced thereby, the trial court can grant a new trial. (citation omitted). The Court finds that the instruction was not an inaccurate statement of the law in Idaho and denies the motion." ¹

(See Judge Wilper's Memorandum Decision and Order, Exhibit "A" attached hereto.)

Similar to what the Schmechels anticipate the Defendants will argue, the Defendant in *Jones*, Dr. Jenkins, argued in moving for a new trial, that the definition of "reckless disregard" as defined by *Athay v. Stacey* should have been the definition used by the court. The *Athay* court analyzed the issues as follows:

"In *Hodge v. Borden*, 91 Idaho 125, 417 P. 2d 75, 84 (1966), we adopted the definition announced by the Oregon Supreme Court in *Williamson v. McKenna*, 223 Or. 366, 354 P. 2d 56, 67, which is "Reckless disregard of the rights of others' could be regarded as the type of conduct engaged in by the driver when he actually perceives the danger and continues his course of conduct." We distinguished reckless disregard from gross negligence in that the latter would apply where the driver does not know of the high degree of manifest danger, but should have known.

Athay v. Stacey, 142 Idaho 360, ___, 128 P. 3d 8987, 902 (2005).

Judge Wilper disagreed with Dr. Jenkins, determining that *Athay's* definition of reckless disregard applies to the Idaho Guest Statute:

However, *Athay* deals with a statutory definition of reckless disregard in light of a change in statutory language replacing reckless disregard with gross negligence. Under this circumstance, the Idaho Supreme Court found that the legislature must have intended that, in this statutory context, the terms gross negligence and reckless disregard must be different. In that light, the Court defined reckless disregard. The definition contained in *Athay* is limited to cases arising under the Idaho Guest Statute.

¹ The Court instructed the jury that: (t)he word "reckless" when used in these instructions and when applied to the allegations in this case, means more than ordinary negligence. The word means actions taken under circumstances where the actor knew or should have known that the actions not only created an unreasonable risk of harm to another, but involved a high degree of probability that such harm would actually result. This instruction was a modification of IDJI 2nd 2.25.

(See Judge Wilper's Memorandum Decision and Order, Exhibit "A" attached hereto.)

Judge Wilper, in distinguishing the definition of reckless disregard as applied to the Idaho Guest Statute, drew his analysis from *State v. Sibley*, 138 Idaho 259, 263-64, 61 P. 3d 616, 620-21 (Ct. App. 2002). In *Sibley*, the court instructed the jury consistent with the gross negligence definition found in the pattern jury instructions. The Defendant in *Sibley* requested that the court submit the definition used by the court in *Peterson v. Parry*, 92 Idaho 647, 657, 448 P. 2d 653, 663 (1968). The *Sibley* court held that the definition of gross negligence, and by extension, reckless disregard, that the *Peterson* court defined applied in the context of the Idaho Guest Statute, rather than in the criminal context involved in *Sibley*. Ultimately, the Court of Appeals in *Sibley* determined that the definition of gross negligence and reckless disregard in *Petersen* is limited to cases arising under the Idaho Guest Statute. 138 Idaho 259, 263-64, 61 P.3d 616, 620-21 (Ct. App. 2002).

Judge Wilper also addressed the decisions of Idaho Courts upholding the jury instructions defining reckless conduct according to the Restatement's definition:

"This Court also considered the fact that Idaho Courts have recently upheld jury instructions defining reckless conduct similar to the instruction given in this case. See, e.g., *Galloway v Walker*, 140 Idaho 672, 676-77, 99 P. 3d 625, 629-30 (Ct. App. 2004) (upholding use of definition of reckless conduct found in REST. TORTS 2nd (1965) as correct standard).² The current pattern jury instruction did not apply in *Galloway*, however the language stating that actions could be considered reckless if a person "had reason to know" of unreasonable risk is contained within the

² REST. TORTS 2nd Section 500 (1965): A person's conduct is reckless if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary, under the circumstances."

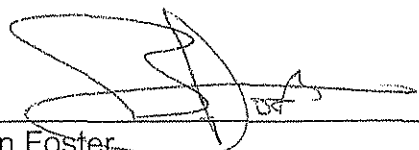
Restatement definition. Moreover, Idaho cases have traditionally used the Restatement definition when instructing juries on the definition of reckless conduct. See *Hunter v. Horton*, 80 Idaho 475, 479 (1958); *Johnson v. Sunshine Mining Co.* 106 Idaho 866 (1984); *DeGraff v. Whight*, 130 Idaho 577 (1997); See also *Kuntz v. Lamar Corp.* 385 F. 3d 1177 (9th Cir. 2004) (interpreting reckless conduct under § I.C. 6-1603 to contain knowing or *having reason to know* of facts...)”

(See Judge Wilper’s Memorandum Decision and Order, Exhibit “A” attached hereto.)

Ultimately, Judge Wilper determined that “because the definition of reckless conduct found in *Athay* is limited to cases involving the Idaho Guest Statute and because Idaho Courts have traditionally used the Restatement definition of recklessness in other tort actions,” a modification of IDJI 2.25 was the appropriate instruction for the jury’s consideration.

Thus, whatever argument Defendants put forward indicating their belief that recklessness contains an element of conscious disregard, this argument has been found unpersuasive and contrary to Idaho law. Recklessness simply does not require intent and any argument to the contrary has been dealt with by other Idaho Courts, both trial and appellate, with the same outcome. Plaintiffs therefore respectfully request that their proffered instruction on the definition of reckless conduct be given by the Court.

RESPECTFULLY SUBMITTED, this 22 day of October, 2007.


Byron Foster,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

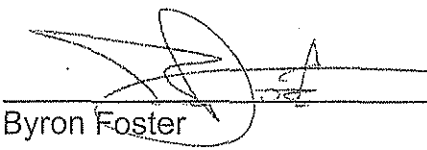
I hereby certify that on the 22 day of October, 2007, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Steven J. Hippler
GIVENS PURSLEY, LLP
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720
*Attorneys for Clinton Dille, M.D. and
Southern Idaho Pain Institute*

☐ U.S. Mail
☐ Hand Delivery
☒ Facsimile (208) 388-1300

Richard E. Hall
Keely E. Duke
HALL FARLEY OBERRECHT &
BLANTON, PA
702 West Idaho, Suite 700
PO Box 1271
Boise ID 83701
Attorneys for Thomas Byrne, PA

☐ U.S. Mail
☐ Hand Delivery
☒ Facsimile (208) 395-8585


Byron Foster

NO. _____
FILED _____
A.M. _____ P.M. 2:13

JAN 12 2007

By J. DAVID NAVARRO, Clerk
J. DAVID NAVARRO, Clerk
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

MICHAEL ANTHONY JONES,
individually and as guardian ad litem for
RHYS ALEXANDER JONES (DOB
8/20/99) and MOIRA EIBHLIN JONES
(DOB 7/04/02), LYNNE ROYER, as
natural mother of LORI MARIE JONES,
deceased, and KIM ROYER, as step-
father of LORI MARIE JONES,
deceased, husband and wife, and
HAROLD BOWERS,

Plaintiffs,

vs.

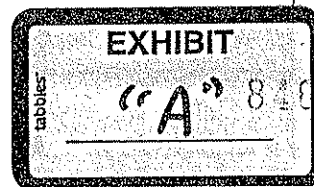
Case No. CV PI 0400486D

MEMORANDUM DECISION AND
ORDER

ANESTHESIOLOGY CONSULTANTS
OF TREASURE VALLEY, PLLC,
DEBORAH JENKINS, M.D., THOMAS
LARK, M.D., B&B
AUTOTRANSFUSION SERVICES,
INC., an Idaho Corporation, and JOHN
DOES I through V

Defendants.

In this wrongful death action, an Ada County jury awarded \$6,012,083.00 to the family of decedent Lori Jones, a wife and mother of two who died while being operated on at Treasure Valley Hospital in August 2004. The claims of wrongful death were brought by her husband and children, her mother, and her father. The Court granted summary judgment to one of the Defendants, Treasure Valley Hospital, on September 1, 2006, with a Judgment being entered on December 27, 2006 making that decision final. The trial began on October 18, 2006. The jury returned a verdict on November 14, 2006. The jury found that the defendants, B&B Autotransfusion Services, Inc.,



1 Dr. Deborah Jenkins, Dr. Thomas Lark, and Anesthesiology Consultants of Treasure Valley (as
2 employer of Jenkins and Lark) negligently caused the death of Lori Jones. The jury apportioned
3 49% of the fault to B&B Autotransfusion, 36% to Dr. Jenkins, and 15% to Dr. Lark. The jury also
4 found that Dr. Jenkins and B&B Autotransfusion acted recklessly and that Dr. Lark did not. The
5 Court entered the Judgment on November 15, and issued an Amended Judgment on December 22.
6 A number of motions are pending before the Court and this Memorandum Decision and Order
7 addresses each pending motion.

8 Based on the following analysis, the Court hereby grants and denies the motions as follows:

- 9 • The Court grants the costs as a matter of right requested by Defendant TVH, but denies
10 discretionary costs
- 11 • The Court denies Defendant B&B Autotransfusion's Motion for New Trial and its Motion
12 for Judgment Notwithstanding the Verdict
- 13 • The Court denies Defendant Jenkins' Motion for a New Trial, and the Motion for Periodic
14 Payments
- 15 • The Court grants the Plaintiffs' motions for costs as a matter of right and discretionary costs

16 Motions Pending Before the Court

17 Treasure Valley Hospital filed a motion requesting costs pursuant to I.R.C.P. 54.

18 The Plaintiffs filed respective motions for costs pursuant to I.R.C.P. 54.

19 Defendants Dr. Deborah Jenkins and Anesthesiology Consultants of Treasure Valley
20 (ACTV) moved the Court for a new trial.¹ The motions both argue that the Court erred in
21 instructing the jury on the definition of recklessness. Defendant Dr. Jenkins also filed a motion
22 pursuant to I.C. § 6-1602 (2004) requesting periodic payments of the judgment entered against her.

23
24 ¹ The motions were filed by Defendants B&B Autotransfusion and Dr. Deborah Jenkins. The motion filed by Dr.
25 Jenkins was joined by counsel for ACTV because ACTV is liable for the actions of its agent Dr. Jenkins. Defendant
26 Thomas Lark has not joined in this motion.

1 Defendant B&B Autotransfusion moved for a new trial based on:

2 (1) Irregularities in the proceeding (improper comments made during closing arguments);

3 (2) The contention that the verdict was not supported by the evidence;

4 (3) Alleged errors by the Court in not admitting proffered evidence;

5 (4) Allegedly erroneous rulings constituting abuse of discretion as follows:

6 (i) That I.C. § 6-1012-13 (2004) governed the actions of Ms. Kurtz, a medical
7 technologist employed by the B&B;

8 (ii) The Court's rejection of the argument that Kurtz's duties did not extend beyond
9 the moment she gave the blood bag to the anesthesiologist;

10 (iii) That Plaintiffs' standard of care witnesses were not qualified to testify about the
11 standard of care applicable to Ms. Kurtz;

12 (iv) Limiting the scope of the testimony of the expert proffered by B&B; and

13 (v) Not including various non-parties on the verdict form;

14 (5) The contention that the jury verdict was based on passion and prejudice; (6) the
15 contention that the actions of Ms. Kurtz were outside the scope of her employment, and
16 therefore could not be imputed to her employer, B&B Autotransfusion.

17 B&B also moved for a judgment notwithstanding the verdict based on:

18 (1) The alleged error of the Court's decision that I.C. § 6-1012-13 (2004) governed the
19 actions of Kurtz, a medical technologist employed by the Defendant B&B Autotransfusion;

20 (2) The argument that the duties of Kurtz did not extend beyond the moment she gave the
21 blood bag to the physicians providing anesthesia, therefore the jury's verdict was erroneous;

22 (3) The contention that the experts proffered by the Plaintiffs to testify about Kurtz's breach
23 of the standard of care were erroneously allowed to testify because proper foundation was not laid
24 out by the Plaintiffs;

1 (4) The contention that the Court erred in limiting the scope of the testimony of the expert
2 proffered by the Defendant B&B; and

3 (5) The contention that the Court erred by not including various non-parties on the verdict
4 form.

5 The Plaintiffs filed a motion requesting attorney's fees against all the Defendants Jenkins,
6 Lark and B&B Autotransfusion based upon I.R.C.P. 37(c), and against Defendant B&B
7 Autotransfusion pursuant to I.C. § 12-121 & 123 (2004).

8 The Court heard oral arguments on the motion for costs filed by TVH on December 8, 2006
9 and took the matter under advisement. The Court heard oral arguments on the remaining motions
10 listed above on January 8, 2007 and took the matters under advisement.

11 ANALYSIS

12 Motions for a New Trial

13 The trial court is entrusted with a sound judicial discretion to be exercised in granting or
14 refusing to grant a new trial. *Blaine v. Byers*, 91 Idaho 665, 671, 429 P.2d 397, 403 (1967). The
15 Court has considered the arguments made by each party requesting a new trial and finds all
16 arguments to be without merit. For the reasons set forth below, the collective motions for a new
17 trial are hereby denied.

18 *Motion for a New Trial / Dr. Jenkins and ACTV*

19 The Motion for a New Trial filed by Defendant Jenkins and joined by Defendant ACTV
20 alleges that the Court erroneously instructed the jury regarding the definition of recklessness. If a
21 jury is given an inaccurate instruction misstating the law and a party has been prejudiced thereby, the
22 trial court can grant a new trial. *Corey v. Wilson*, 93 Idaho 54, 58, 454 P.2d 951, 955 (1969). The
23
24
25
26

1 Court finds that the instruction was not an inaccurate statement of the law in Idaho and denies the
2 motion.¹

3 Dr. Jenkins argued that the definition of “reckless disregard” as defined in *Athay v. Stacey*
4 should have been the definition used by the Court in this matter.

5 In *Hodge v. Borden*, 91 Idaho 125, 134, 417 P.2d 75, 84 (1966), we adopted the
6 definition announced by the Oregon Supreme Court in *Williamson v. McKenna*, 223
7 Or. 366, 354 P.2d 56, 67 (1960), which is, “ ‘Reckless disregard of the rights of
8 others’ could be regarded as the type of conduct engaged in by the driver when he
9 actually perceives the danger and continues his course of conduct.” We distinguished
reckless disregard from gross negligence in that the latter would apply where the
driver does not know of the high degree of manifest danger, but should have known.

Athay v. Stacey, 142 Idaho 360, ___, 128 P.3d 897, 902 (2005).

10 However, *Athay* deals with a statutory definition of reckless disregard in light of a change in
11 statutory language replacing reckless disregard with gross negligence. Under this circumstance, the
12 Idaho Supreme Court found that the legislature must have intended that, in this statutory context,
13 the terms gross negligence and reckless disregard must be different. In that light, the Court defined
14 reckless disregard. The definition contained in *Athay* is limited to cases arising under the Idaho
15 Guest Statute.

16 This is explained in *State v. Sibley*, 138 Idaho 259, 263-64, 61 P.3d 616, 620-21 (Ct. App.
17 2002). In *Sibley*, a criminal case, the district court had instructed the jury concerning the definition
18 of gross negligence by using the pattern jury instructions. *Id.* The defendant argued that the
19 definition found in *Petersen v. Parry*, 92 Idaho 647, 657, 448 P.2d 653, 663 (1968), should have
20 been used. 138 Idaho 263, 61 P.2d 620. *Peterson* cited to *Hodge v. Borden*, as did *Athay v. Stacey*.

21 The Court of Appeals found that the definition of gross negligence (and therefore by logical

22
23 ¹ The Court instructed the jury that:

24 The word “reckless” when used in these instructions and when applied to the allegations in this case,
25 means more than ordinary negligence. The word means actions taken under circumstances where the
actor knew or should have known that the actions not only created an unreasonable risk of harm to
another, but involved a high degree of probability that such harm would actually result.

26 This instruction was a modification of IDJI 2nd 2.25.

1 extension “reckless disregard”) contained in *Peterson* applies to cases arising under the Idaho Guest
2 Statute. *Id.* (“The definition of gross negligence in the *Petersen* case is one that applies in the
3 context of civil cases involving the Idaho guest statute.”). Because the pattern jury instructions
4 contained a definition of gross negligence in a criminal context, the Court of Appeals held the district
5 court did not err in defining gross negligence according to the pattern instructions rather than the
6 definition in *Peterson*, which it found to be limited to cases arising under the Idaho Guest Statute.
7 *Id.*

8 This Court also considered the fact that Idaho Courts have recently upheld jury instructions
9 defining reckless conduct similar to the instruction given in this case. *See, e.g., Galloway v. Walker*,
10 140 Idaho 672, 676-77, 99 P.3d 625, 629-30 (Ct. App. 2004) (upholding use of definition of
11 reckless conduct found in REST. TORTS 2nd (1965) as correct standard).¹ The current pattern jury
12 instruction did not apply in *Galloway*, however the language stating that actions could be considered
13 reckless if a person “had reason to know” of unreasonable risk is contained within the Restatement
14 definition. Moreover, Idaho cases have traditionally used the Restatement definition when
15 instructing juries on the definition of reckless conduct. *See Hunter v. Horton*, 80 Idaho 475, 479
16 (1958); *Johnson v. Sunshine Mining Co.*, 106 Idaho 866 (1984); *DeGraff v. Whight*, 130 Idaho 577
17 (1997); *See also Kuntz v. Lamar Corp.*, 385 F.3d 1177 (9th Cir. 2004) (interpreting reckless
18 conduct under § I.C. 6-1603 to contain knowing or *having reason to know* of facts...).

19 Because the definition of reckless conduct found in *Athay* is limited to cases involving actions
20 under the Idaho Guest Statute and because Idaho Courts have traditionally used the Restatement
21

22 ¹REST. TORTS 2nd § 500 (1965):

23 A person's conduct is reckless if he does an act or intentionally fails to do an act which it is his duty to
24 realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also
25 that such risk is substantially greater than that which is necessary, under the circumstances.
26

1 definition of recklessness in other tort actions, Jenkins motion for a new trial based on the argument
2 that the Court erred in instructing the jury on recklessness is hereby denied. The Court's jury
3 instruction, a modification of IDJI 2.25, was not given in error.

4 *Motion for a New Trial / B&B Autotransfusion*

5 (1) Irregularities in the proceeding (improper comments made during closing arguments)

6 B&B alleges that certain comments made during closing arguments constituted irregularities
7 in the proceedings.¹ However, the Defendant failed to make a timely objection to those comments.
8 A party that fails to timely object to an irregularity in the proceeding is not entitled to a new trial
9 based on the alleged irregularity. *See, e.g., Hall v. Johnson*, 70 Idaho 190, 196, 214 P.2d 467, 469
10 (1950). Because B&B failed to object to the alleged irregularities at trial, the Defendant is not
11 entitled to a new trial based on these allegations.

12 (2) The contention that the verdict was not supported by the evidence

13 B&B alleges that the verdict was not supported by sufficient evidence. Unlike a motion for
14 JNOV, a trial court may grant a new trial even though there is substantial evidence to support the
15 jury's verdict. *Bott v. Idaho State Bldg. Auth.*, 122 Idaho 471, 475, 835 P.2d 1282, 1286 (1992).
16 "The trial court may grant a new trial when it is satisfied the verdict is not supported by, or is
17 contrary to, the evidence, or is convinced the verdict is not in accord with the clear weight of the
18 evidence and that the ends of justice would be subserved by vacating it, or when the verdict is not in
19

20 ¹ B&B alleged the following irregularities: (1) attorney Comstock's references to the meanings his staff would associate
21 with the mother/daughter relationship and (2) attorney Ramsden's arguments that Kurtz sat and watched the decedent
22 die without acting. At oral argument, B&B also alleged that the distortion of the Court's jury instruction on recklessness
23 during closing arguments, specifically the statement or statements that a failure to act could also be reckless under the
24 Court's instructions, was also an irregularity in the proceeding. This clarified the nebulous contention made in B&B's
25 motion that the Court's instruction on recklessness was "distorted in final argument." While this latter allegation also
26 suffers from the lack of a timely objection and could be denied on that ground, B&B did not set out in detail the basis for
this allegation in its briefing or affidavits. The Court will therefore not consider this argument as proper on the
additional ground that the allegation was not sufficiently detailed for the Court to be in a position to make a
determination. *See Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 350, 986 P.2d 996, 1016 (1999) (finding one
sentence allegation by party insufficient under I.R.C.P. 59(a) standards).

1 accord with either law or justice.” *Blaine v. Byers*, 91 Idaho 665, 429 P.2d 397 (1967). The
2 consideration of a motion for a new trial based on allegations that the verdict was not supported by
3 the evidence involves an element of discretion on the part of the trial court, and involves the
4 weighing of evidence, as opposed to motions for directed verdicts motions for JNOV, where the
5 Court is not free to weigh the evidence. *See Quick v. Crane*, 111 Idaho 759, 767, 727 P.2d 1187,
6 1195 (1986). The Court finds that the verdict for the Plaintiffs was supported by the proffered
7 evidence. The motion based on the contention that the verdict was not supported by the evidence is
8 denied.

9 (3) Alleged errors by the Court in not admitting Exhibits 316 and 311

10 Failure to admit evidence is an “error in law, occurring at the trial.” I.R.C.P. 59(a)(7).
11 Whether to admit or exclude evidence is a matter of the trial court’s discretion. *Morris v. Thomson*,
12 130 Idaho 138, 144, 937 P.2d 1212, 1218 (1997). In the case of an incorrect ruling regarding
13 evidence, a new trial is merited only if the error affects a substantial right of one of the parties. *Id.*
14 “No error in either the admission or the exclusion of evidence is grounds for granting a new trial or
15 for setting aside a verdict unless refusal to take such action appears to the court to be inconsistent
16 with substantial justice.” *Burgess v. Salmon River Canal Co., Ltd.*, 127 Idaho 565, 575, 903 P.2d
17 730, 740 (1995).

18 B&B has not identified a substantial right that was affected by the alleged error in not
19 admitting these exhibits. The purpose of admitting exhibit 316 would have been to explain the use of
20 the Y-Type blood tube. *See* Defendant B&B Autotransfusion Services, Inc.’s Motion for a New
21 Trial, p.5 (“the Court erred in preventing the admission of Exhibit 316, which explains the function
22 of the Y-type Blood Set”). The blood set had been admitted into evidence, *see id.*, and its function
23 had been explained by the Defendant’s expert witness as well as other witnesses during the trial.
24 Therefore, the Defendant cannot demonstrate how the failure to admit this evidence affected a
25 substantial right or would be inconsistent with substantial justice.

1 The refusal to admit exhibit 311, a hospital protocol amended after the death of Lori Jones,
2 was based on a ruling that the change in the protocol was a subsequent remedial measure. The
3 change in policy of TVH as reflected in the changed protocol is aimed at preventing another death
4 based on the actions of persons in the operating rooms. The Court did not err in finding this to be a
5 subsequent remedial measure, therefore properly barred admission under I.R.E. 407.

6 (4) Allegedly erroneous rulings constituting an abuse of discretion as follows:

7 (i) That I.C. § 6-1012-13 (2004) governed the actions of Ms. Kurtz, a medical technologist
8 employed by B&B

9 I.C. § 6-1012 & § 6-1013 cover all providers of healthcare. The statute covers:
10 any physician and surgeon or other provider of health care, including, without
11 limitation, any dentist, physicians' assistant, nurse practitioner, registered nurse,
12 licensed practical nurse, nurse anesthetist, **medical technologist**, physical therapist,
hospital or nursing home, or any person vicariously liable for the negligence of them
or any of them...

13 Ms. Kurtz was trained to operate a cell saver machine and was employed by a firm that provided
14 healthcare services. The contention that she was not a provider of healthcare is without merit.

15 (ii) The Court's rejection of the argument that Kurtz's duties did not extend beyond the moment she
16 gave the blood bag to the anesthesiologists

17 The argument made by counsel appears to be that the verdict was based on insufficient
18 evidence because the evidence demonstrated Ms. Kurtz did not have a duty to act once she handed
19 the blood bag to the anesthesiologists. This argument was made repeatedly throughout the trial and
20 was found to be without merit by the jury. The evidence established that the standard of care
21 required Ms. Kurtz to notify the anesthesiologists of the warning on the re-infusion bag and the jury
22 found that she did not do so adequately. The jury's determination was not against the weight of the
23 evidence, and the Court, in weighing the evidence, believes the jury was correct. *See Quick v.*
24 *Crane*, 111 Idaho 767, 727 P.2d 1195 (when presented with motion for new trial based on
25
26

1 insufficiency of the evidence, Court may weigh the evidence). The request for a new trial based on
2 this argument is denied.

3 (iii) That Plaintiffs' standard of care witnesses were not qualified to testify about the standard of care
4 applicable to Ms. Kurtz

5 The facts demonstrate that the Plaintiffs' experts properly demonstrated they were familiar
6 with a national standard of care for operators of cell saver machines and they contacted local
7 practitioners to determine if there were any local deviations from the national standard of care. This
8 is an accepted method of familiarizing an out of area expert with the local standard of care. See,
9 *e.g., Edmunds v. Kraner*, 142 Idaho 867, ___, 136 P.3d 338, 347 (2006).

10 (iv) Limiting the scope of the testimony of the expert proffered by B&B

11 B&B argues that it was error for the Court to limit the scope of the testimony of Certified
12 Registered Nurse Anesthetist (CRNA) Troy Britton. Errors concerning the admission of testimony
13 will only merit a new trial if the error affects a substantial right. *Morris*, 130 Idaho at 144, 937 P.2d
14 at 1218. B&B argues that their expert was not allowed to testify about "transfer bags" nor the
15 standard of care applicable to anesthesiologists.

16 The Defendant provides no factual support for the allegation that the expert was not
17 permitted to testify about "transfer bags." I.R.C.P. 59(a)(7) states that, "Any motion based on
18 subdivisions 6 or 7 must set forth the factual grounds therefore with particularity." Alleged errors in
19 evidentiary rulings are legal errors. *Morris*, 130 Idaho at 144, 937 P.2d at 1218. Britton was
20 prevented from testifying about the use or non-use of transfer bags as related to the standard of care
21 of the hospital. Britton was not disclosed as an expert with knowledge of the standard of care
22 relating to hospitals.

23 There is no factual basis for the contention that Britton was prevented from rebutting the
24 testimony of Plaintiffs' experts' statements that there was a national standard of care applicable to
25 cell saver technicians.

1 The Defendant failed to proffer their expert, CRNA Britton, as an expert to testify about the
2 standard of care applicable to anesthesiologists. Because the Defendant failed to disclose Britton as
3 an expert on the standard of care applicable to anesthesiologists, Britton was not allowed to testify
4 about that subject. I.R.C.P. 26(e)(4) authorizes the trial court to exclude testimony of witnesses not
5 disclosed by required supplementation of a response to a request for discovery. Exclusion or
6 admission of such evidence is discretionary with the trial court. *Cf. Smith v. Webber*, 97 Idaho 703,
7 551 P.2d 1339 (1976). Because the Court correctly perceived the issue as one of discretion, was
8 authorized to bar the testimony under I.R.C.P. 26(e), and reached the decision by an exercise of
9 reason, no error was committed.

10 (v) The contention that the Court erred by not including various non-parties on the verdict form

11 Because B&B failed to produce any expert testimony demonstrating that ACTV (as opposed
12 to an agent of ACTV) or TVH's actions fell below the applicable standard of care, including these
13 entities on the special verdict form was not warranted by Idaho law.

14 In order to have TVH or ACTV listed on the verdict form, B&B was required to present
15 evidence sufficient to make a case for medical malpractice against them. *See Vannoy v. Uniroyal*
16 *Tire Co.*, 111 Idaho 536, 551, 726 P.2d 648, 663 (1985) (Bistline J., concurring) ("It is the general
17 rule that before nonparties are placed on jury verdict forms, there must be a showing that the
18 requisite elements of a cause of action against them have been presented at trial.") (citation
19 omitted) (emphasis added). The elements of a cause of action for medical negligence are stated in
20 the Idaho Code:

21
22 In any case, claim or action for damages due to injury to or death of any person,
23 brought against any physician and surgeon or other provider of health care...such
24 claimant or plaintiff must, as an essential part of his or her case in chief, affirmatively
25 prove by direct expert testimony and by a preponderance of all the competent
26 evidence, that such defendant then and there negligently failed to meet the applicable
standard of health care practice of the community in which such care allegedly was or
should have been provided...

I.C. § 6-1012

Therefore, before any non-parties would be included on the verdict form, Defendant B&B was required to demonstrate as part of their case in chief that the non-parties breached the applicable standard of care applicable to them and that the breaches of care were substantial factors in the death of Lori Jones.

B&B designated Dr. Blotter, a mechanical engineer, to testify that the I.V. tubing selected by the plaintiff Anesthesiology Consultants of Treasure Valley and the non-party Treasure Valley Hospital was a cause of the death of Lori Jones. This expert was not qualified under § 6-1012 to testify that the hospital breached the standard of care applicable to hospitals.

An expert testifying as to the standard of care in medical malpractice actions must show that he or she is familiar with the standard of care for the particular health care professional for the relevant community and time. *Perry v. Magic Valley Reg'l Med. Ctr.*, 134 Idaho 46, 995 P.2d 816 (2000); *Rhodehouse v. Stutts*, 125 Idaho 208, 868 P.2d 1224 (1994). The expert must also state how he or she became familiar with that standard of care. *Id.*

The Court correctly determined that the special verdict form should not have included TVH or ACTV because B&B had not provided any competent evidence of TVH's or ACTV's breach of the standard of care.¹ Nor did B&B present any evidence that Haemonetics was negligent for the construction of the blood-saver machine used in the surgery.

¹ Defendant B&B repeatedly claims that the testimony of Dr. Hines and/or Dr. Migiliori would have established the requisite expert testimony to establish a breach of the standard of care. However, neither doctor was designated as an expert by B&B at any time prior to trial. I.R.C.P. 26(e)(4) authorizes the trial court to exclude testimony of witnesses not disclosed by required supplementation of a response to a request for discovery. Exclusion or admission of such evidence is discretionary with the trial court. *Smith v. Webber*, 97 Idaho 703, 551 P.2d 1339 (1976). Similarly, the determination whether a witness is qualified to state an opinion is committed to the discretion of the trial court. *See e.g., Sorensen v. Pickens*, 99 Idaho 564, 585 P.2d 1275 (1978); *Bean v. Diamond Alkali Co.*, 93 Idaho 32, 454 P.2d 69 (1969).

1 Because no evidence established that the Defendant B&B would have been able to establish
2 the elements of medical negligence and negligent manufacture or design, relative to TVH, ACTV,
3 and Haemonetics, the Court properly declined to include these non-parties on the verdict form.

4 (5) The contention that the jury verdict was based on passion and prejudice

5 The evidence at trial supported the verdict rendered by the jury. The evidence demonstrated
6 that at the time of her death, Lori Jones was well educated, well employed, ambitious and the
7 primary wage earner in her family. The evidence also demonstrated that Lori and her parents had a
8 close relationship. Based on the evidence presented to the jury, the Court finds the verdict was not
9 the result of passion and prejudice.

10 (6) The contention that the actions of Kurtz were outside the scope of her employment, and

11 therefore could not be imputed to her employer, B&B Autotransfusion

12 The evidence at trial demonstrated that Kurtz was acting within the scope of her employment
13 when the negligent and reckless acts occurred. The Idaho Supreme Court has stated that:

14 There is a "rebuttable presumption that any act or omission of an employee within the
15 time and at the place of his employment is within the course and scope of his
16 employment and without malice or criminal intent." I.C. § 6-903(e). Acts that are
17 within the scope of employment are "those acts which are so closely connected with
18 what the servant is supposed to do, and so fairly and reasonably incidental to it, that
19 they may be regarded as methods, even though quite improper ones, of carrying out
20 the objectives of employment." *The Richard J. and Esther E. Wooley Trust v.*
DeBest Plumbing, Inc., 133 Idaho 180, 184, 983 P.2d 834, 838 (1999) (*Wooley*).
Wooley elaborated that an employee's conduct is within the scope of employment if
"it is of the kind which he is employed to perform, occurs substantially within the
authorized limits of time and space, and is actuated, at least in part, by a purpose to
serve the master." *Id.*

Anderson v. Spalding, 137 Idaho 509, 518-19, 50 P.3d 1004, 1013-14 (2002).

21 The fact that the act was found to be reckless does not mean that the act was not within the
22 scope of employment. *See Richard J. and Esther E. Wooley Trust v. DeBest Plumbing, Inc.*, 133
23 Idaho 180, 983 P.2d 834 (1999). [V]icarious liability extends to any and all tortious conduct of the
24 servant which is within the 'scope of the employment. (citing *W. Page Keeton et al., Prosser and*
25

1 Keeton on Torts § 70, at 501 (5th ed. 1984))(quotations removed); *see also* Rest. Agency § 230
2 Forbidden Acts ("An act, although forbidden, or done in a forbidden manner, may be within the
3 scope of employment.").

4 The evidence demonstrated that Kurtz acted within the scope of her employment and it was
5 not an error of law to instruct the jury that Kurtz was the agent of B&B Autotransfusion.

6 Motion for JNOV

7 A motion for judgment n.o.v. under I.R.C.P. 50(b) admits the truth of all
8 adverse evidence. Every reasonable inference is drawn in the light most favorable
9 to the non-moving party. The question is not whether the record is literally devoid
10 of evidence supporting the non-moving party, but whether there is substantial
11 evidence upon which the jury could properly find a verdict for that party. *Mann v.*
12 *Safeway Stores, Inc.*, 95 Idaho 732, 518 P.2d 1194 (1974). Hence, the trial court is
13 not free to weigh the evidence or pass on the credibility of witnesses, making its
14 own independent findings of fact and comparing them to the jury's findings, as
15 would be the case in deciding a motion for a new trial. *Quick v. Crane*, 111 Idaho
16 759, 727 P.2d 1187 (1986). Rather, the requisite standard is whether the evidence
17 is of sufficient quantity and probative value that reasonable minds could reach the
18 same conclusion as did the jury. *Mann v. Safeway Stores, Inc.*, *supra*.
19 *Smith v. Praegitzer*, 113 Idaho 887, 889, 749 P.2d 1012, 1014 (Ct. App. 1988).

20 The Court considered the motion for JNOV and finds that the verdict was supported by
21 evidence of sufficient quality and probative value. The motion is denied.

22 Motions for Costs under 54(d)

23 Idaho Rule of Civil Procedure 54(d)(1)(A) states that a prevailing party shall be awarded
24 costs, unless otherwise provided by the Court or limited by the Rules. "The determination of which
25 party is the prevailing party for purpose of awarding costs is within the discretion of the trial court."
26 *J.R. Simplot Co. W. Heritage Ins. Co.*, 132 Idaho 582, 584, 977 P.2d 196, 198 (1999). Rule
54(d)(1)(B) lists the factors that this Court must consider in ruling on which party is the prevailing
party as follows:

In determining which party to an action is a prevailing party and entitled to costs, the
trial court shall in its sound discretion consider the final judgment or result of the
action in relation to the relief sought by the respective parties, whether there were
multiple claims, multiple issues, counterclaims, third party claims, cross-claims, or

1 other multiple or cross issues between the parties, and the extent to which each party
2 prevailed upon each of such issue or claims. The trial court in its sound discretion
3 may determine that a party to an action prevailed in part and did not prevail in part,
4 and upon so finding may apportion the costs between and among the parties in a fair
5 and equitable manner after considering all of the issues and claims involved in the
6 action and the resultant judgment or judgments obtained.

7 Each of the Plaintiffs and Defendant TVH have filed a motion with the Court requesting
8 costs. After considering the factors enumerated above, the Court finds that each of the Plaintiffs and
9 Defendant TVH are the prevailing parties in this matter. These parties are therefore entitled to their
10 costs as a matter of right.

11 The Court finds that Plaintiff Bowers is entitled to \$2,345.36 in costs as a matter of right.

12 The Court finds that Plaintiff Royer is entitled to \$5,534.41 in costs as a matter of right.

13 The Court finds that Plaintiffs Michael, Moira, and Rhys Jones are entitled to \$23,794.50 in
14 costs as a matter of right.

15 The Court finds that Defendant TVH is entitled to \$4,086.99 in costs as a matter of right.

16 The Court finds that, because the experts engaged by Defendant TVH did not testify at trial, these
17 costs are properly considered discretionary costs analyzed under Rule 54(d)(1)(D). *See Swallow v.*
18 *Emergency Med. of Idaho, P.A.*, 138 Idaho 589, 598, 67 P.3d 68, 77 (2003).

19 Each of the Plaintiffs and Defendant TVH have also requested discretionary costs. Rule
20 54(d)(1)(D) governs discretionary costs. It states that:

21 Additional items of cost not enumerated in, or in an amount in excess of that listed in
22 subparagraph (C), may be allowed upon a showing that said costs were necessary and
23 exceptional costs reasonably incurred, and should in the interest of justice be assessed
24 against the adverse party. The trial court, in ruling upon objections to such
25 discretionary costs contained in the memorandum of costs, shall make express
26 findings as to why such specific item of discretionary cost should or should not be
allowed. In the absence of any objection to such an item of discretionary costs, the
court may disallow on its own motion any such items of discretionary costs and shall
make express findings supporting such disallowance.

Rule 54(d)(1)(D) commits the decision of whether to award costs to the discretion of the
trial court. *Van Brunt v. Stoddard*, 136 Idaho 681, 689, 39 P.3d 621, 629 (2001). When an objection

1 to discretionary costs is presented, the trial court "shall make express findings as to why such
2 specific item of discretionary cost should or should not be allowed." I.R.C.P. 54(d)(1)(D). Thus, the
3 Court must make specific findings that each discretionary cost was 1) necessary, 2) exceptional, 3)
4 reasonably incurred, and 4) should be assessed against the adverse party in the interest of justice.
5 *Evans v. State*, 135 Idaho 422, 432, 18 P.3d 227, 237 (Ct. App. 2001); *Swallow*, 138 Idaho at 598,
6 67 P.3d at 77.

7 *Discretionary Costs Requested by the Plaintiffs*

8 The Court finds that the discretionary costs requested by the plaintiffs were reasonably
9 incurred, necessary, exceptional, and in the interest of justice. The miscellaneous costs requested by
10 the Plaintiffs are costs necessary to bringing a case to trial and the costs were reasonably incurred
11 considering the length of the trial and issues that were tried. The costs were exceptional as the
12 Plaintiffs could not have foreseen the need to expend these costs when the decedent was planning
13 her surgery. The Court finds that the costs associated with retaining expert witnesses that exceed
14 the costs allowed as a matter of right are necessary and exceptional because medical experts are
15 essential in a medical malpractice case and they cannot be retained for the \$2000 awardable under
16 Rule 54(d)(1)(C) as costs as a matter of right. The costs incurred by the Plaintiffs to engage their
17 experts were reasonable. Because the Plaintiffs will already be required to pay their attorneys' fees,
18 the Court finds that it is in the interest of justice that the Plaintiffs be awarded these discretionary
19 costs.

20 The Court finds that Plaintiff Royer is entitled to \$4,418.66 in discretionary costs.

21 The Court finds that Plaintiffs Michael, Moira, and Rhys Jones are entitled to \$77,590.43 in
22 discretionary costs.

23 *Discretionary Costs Requested by Defendant TVH*

24 The discretionary costs requested by the plaintiffs are the costs associated with retaining
25 expert witnesses that exceed the costs allowed as a matter of right. The Court finds that these costs

1 are necessary and exceptional because medical experts are essential in a medical malpractice case and
2 they cannot be retained for the \$2000 awardable under Rule 54(d)(1)(C) as costs as a matter of
3 right. The Court also finds these costs were reasonably incurred. However, because the Defendant
4 is a provider of medical services and able to foresee and plan for the costs of operating such a
5 business, which includes the unfortunate fact that lawsuits will need to be defended and expert
6 witnesses retained, the Court finds that it is not in the interests of justice to award the discretionary
7 costs to TVH. The request is therefore denied.

8 Attorneys' Fees

9 The Plaintiffs have requested attorneys fees based on two legal arguments: (1) Against B&B
10 Autotransfusion pursuant to I.C. § 12-121; and (2) Against B&B, Dr. Lark & ACTV, and Dr.
11 Jenkins pursuant to I.R.C.P 37(c)

12 *Against B&B Autotransfusion pursuant to I.C. § 12-121*

13 Under Idaho Code section 12-121 and Idaho Rule of Civil Procedure 54(e)(1), a trial court
14 may award attorney fees to a prevailing party where it finds that "the case was brought, pursued or
15 defended frivolously, unreasonably or without foundation." *Shettel v. Barnesberger*, 130 Idaho 217,
16 221, 938 P.2d 1255, 1259 (Ct.App.1997). This determination rests in the sound discretion of the
17 trial court, but any such award "must be supported by findings and those findings, in turn, must be
18 supported by the record." *Sunshine Mining Co. v. Metropolitan Mines Corp.*, 111 Idaho 654, 659,
19 726 P.2d 766, 771 (1986).

20 The Court finds that the legal theories and defenses pursued by B&B were not frivolous,
21 unreasonable, or without foundation, therefore denies the motion to tax attorneys' fees pursuant to
22 I.C. § 12-121.

23 *Against B&B, Dr. Lark & ACTV, and Dr. Jenkins pursuant to I.R.C.P 37(c)*

24 Under Rule 37(c):
25
26

1 [I]f a party fails to admit the truth of any matter requested under Rule 36, and the
2 requesting party then proves the truth of the matter, the requesting party may "apply
3 to the court for an order requiring the other party to pay reasonable expenses
4 incurred in making that proof, including reasonable attorney fees." The trial court
5 "shall make the order unless it finds that 1) the request was held objectionable
6 pursuant to Rule 36(a), or 2) the admission sought was of no substantial importance,
7 or 3) the party failing to admit had reasonable grounds to believe that the party might
8 prevail on the matter, or 4) there was other good reason for the failure to admit." *Id.*
9 (emphasis added). In *Ruge v. Posey*, 114 Idaho 890, 761 P.2d 1242 (Ct.App.1988),
10 the Court of Appeals concluded Rule 37(c) requires trial courts to award reasonable
11 expenses unless one of the above exceptions applies. See also *Chenery v. Agri-Lines*
12 *Corp.*, 115 Idaho 281, 288, 766 P.2d 751, 758 (1988).
13 *Bailey v. Sanford*, 139 Idaho 744, 754, 86 P.3d 458, 468 (2004).

14 The Court finds that no attorneys fees should be awarded pursuant to I.R.C.P. 37(c) because
15 of the exception for parties who have a reasonable belief that they will prevail applies in this instance.
16 The evidence proffered by conflicting experts demonstrates the Defendants had a reasonable belief
17 they would prevail. Additionally, Dr. Jenkins points out that she indeed admitted negligence and
18 causation in her amended answers to requests for admissions. See *Payne v. Wallace*, 136 Idaho 303,
19 309, 32 P.3d 695, 701 (Ct. App. 2001) (finding no attorney fees available when party admitted
20 liability prior to trial).

21 Motion for Periodic Payments

22 Dr. Jenkins moved the Court for an order allowing periodic payments pursuant to I.C. 6-1602
23 (2004), which states:

24 (1) In any civil action seeking damages for personal injury or property damages in
25 which a verdict, award or finding for future damages exceeds the sum of one hundred
26 thousand dollars (\$100,000), the court may, in the exercise of its sound discretion,
and at the request of either party, enter a judgment which provides for the periodic
payment of that portion of the verdict, award or finding which represents future
damages.

(4) Unless otherwise agreed to by the claimant, periodic payments shall not be
ordered in any case involving an intentional tort, or wrongful conduct perpetrated
with or accompanied by fraud, dishonesty, malice, willfulness, gross negligence or
which represents an extreme deviation from reasonable standards of conduct.

1 The Court denies the motion because; (1) the jury found Dr. Jenkins to be reckless; and (2)
2 the Plaintiffs did not stipulate to afford Dr. Jenkins the opportunity to periodically pay the damage
3 award. The Court finds that the finding of recklessness precludes the Court from ordering periodic
4 payments without the stipulation of the claimant under § 6-1602(4).

5 In the Alternative, the Court denies the motion because, recognizing this matter as one of
6 discretion, the Court weighed the arguments for and against granting the order and reasoned that this
7 case did not call for an order of periodic payments of damages by Dr. Jenkins.

8 Apportionment of Awarded Costs and Fees

9 The Court recognizes the apportionment of the costs and fees awarded is a matter of
10 discretion. *See Prouse v. Ransom*, 117 Idaho 134, 791 P.2d 1313 (Ct. App. 1989). The Court
11 hereby apportions the fees and costs in relation to the finding of liability as to the costs awarded to
12 the Plaintiffs. The Court apportions the costs awarded to Defendant TVH equally to each Plaintiff.

13 III. CONCLUSION

14 The Motions for New Trial are hereby denied. The Motion for JNOV is denied. The Motion
15 for Periodic Payments is denied. The Motions for Costs and Fees were granted in part and denied in
16 part. The Parties are ordered to pay costs as follows:

17 Defendant B&B Autotransfusion:

18 To Plaintiff Bowers	\$1149.23
19 To Plaintiff Royer	\$4877.00
20 To Plaintiffs Michael, Moira & Rhys Jones	\$49,678.62

21 Defendant Dr. Jenkins / ACTV:

22 To Plaintiff Bowers	\$844.33
23 To Plaintiff Royer	\$3583.11
24 To Plaintiffs Michael, Moira & Rhys Jones	\$36,498.57

25 Defendant B&B Dr. Lark /ACTV:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

To Plaintiff Bowers \$351.80

To Plaintiff Royer \$1492.96

Plaintiffs Michael, Moira & Rhys Jones

To Defendant Treasure Valley Hospital \$1362.33

Plaintiff Bowers

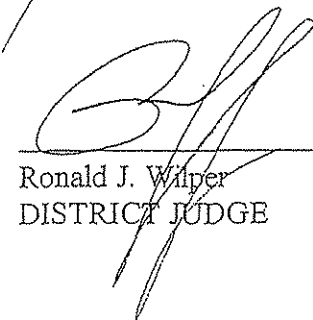
To Defendant Treasure Valley Hospital \$1362.33

Plaintiff Royer

To Defendant Treasure Valley Hospital \$1362.33

IT IS SO ORDERED.

Dated this 12th day of January ~~2006~~ 2007.



Ronald J. Wilper
DISTRICT JUDGE

CERTIFICATE OF MAILING

I, HEREBY CERTIFY that on the 16 day of Jan 2007, I caused a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER to be served by the method indicated below, and addressed to the following:

John J. Janis
537 W. Bannock Street, #200
PO Box 2582
Boise, ID 83701-2582

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail

Bryon V. Foster
199 N. Capital Blvd., Suite 500
PO Box 2774
Boise ID 83701-2774

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail

James B. Lynch
1412 West Idaho, Suite 200
PO Box 739
Boise, ID 83701-0739

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail

Michael Ramsden
618 N Fourth Street
PO Box 1336
Coeur d'Alene, ID 83816-1336

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail

Patrick E. Mahoney
405 S. Eighth Street, Suite 250
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail

1 West H. Campbell
2 PO Box 1641
3 Yakima, WA 98907

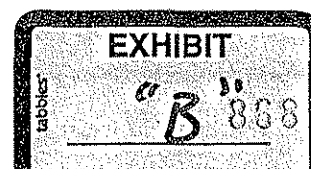
(X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail

4
5 J. DAVID NAVARRO
6 Clerk of the District Court
7 Ada County, Idaho

8 By INGA JOHNSON
9 Deputy Clerk
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INSTRUCTION NO. 31

The word "reckless" when used in these instructions and when applied to the allegations in this case, means more than ordinary negligence. The word means actions taken under circumstances where the actor knew or should have known that the actions not only created an unreasonable risk of harm to another, but involved a high degree of probability that such harm would actually result.



ORIGINAL

David E. Comstock, ISB #: 2455
Taylor Mossman, ISB #: 7500
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721

Byron V. Foster, ISB #: 2760
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of
ROSALIE SCHMECHEL, deceased,
and ROBERT P LEWIS, KIM HOWARD
and TAMARA HALL, natural children of
ROSALIE SCHMECHEL, deceased,
Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A.,
and JOHN DOE and JANE DOE, I
through X,
Defendants.

Case No. CV-05-4345

AFFIDAVIT OF BYRON V. FOSTER
IN SUPPORT OF PLAINTIFFS'
MOTION FOR NEW TRIAL

AFFIDAVIT OF BYRON V. FOSTER IN SUPPORT OF PLAINTIFFS' MOTION FOR NEW TRIAL

- P. 1

G:\Schmechel\Post-Trial\Affidavit of DEC in support of Mtn for New Trial.doc

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2007 NOV 19 PM 4:01

BY _____ CLERK

DEPUTY

STATE OF IDAHO)
 : ss.
County of Ada)

I, Byron V. Foster, being first duly sworn upon oath, deposes and states:

1. That your Affiant makes this Affidavit based upon his own personal knowledge;

2. That Plaintiffs have moved for a new trial under IRCP 59(a)(1), (a)(3) and (a)(7). Pursuant to I.R.C.P. 59(a)7, any Motion for New Trial under I.R.C.P. 59(a)1 must be accompanied by an Affidavit stating in detail the facts relied upon in support of such motion.

3. That at trial, Plaintiffs elicited testimony which proved that:

- a. The Delegation of Services Agreement and the IDAPA regulations set forth the appropriate standard of care for physician assistants in Idaho;
- b. That Defendant Byrne violated the Delegation of Services Agreement.
- c. That Defendant Byrne's conduct was reckless;

4. That in presenting their case, the Plaintiffs were prejudiced by:

- a. The Defendants' late disclosure of the Delegation of Services Agreement and the Court's decision to not allow Plaintiffs' experts to testify regarding the standard of care set forth in the Delegation of Services Agreement;

- b. The Defendants' late disclosure of Dr. Smith's opinion regarding Mrs. Schmechel's cause of death and the Court's ruling to allow Dr. Smith's testimony.
- c. The Court's decision to not instruct the jury on the IDAPA regulations;
- d. The Court's decision to bifurcate the reckless instruction.

5. That these facts, taken together, constitute an irregularity in the proceedings of the trial pursuant to IRCP 59(a)(1), or an error in law that resulted in prejudice to the Plaintiffs pursuant to 59(a)(7).

6. That attached hereto as Exhibit "A" is a true and correct copy of the Amended Notice of Taking Video Deposition Duces Tecum of Thomas Byrne, PA and excerpts from transcript of the Videotaped Deposition of Thomas J. Byrne, P.A. taken May 18, 2006.

7. That attached hereto as Exhibit "B" are true and correct copies of the Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Defendants Byrne and Dillé.

8. That attached hereto as Exhibit "C" are true and correct copies of the Defendants' Responses to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents.

9. That attached hereto as Exhibit "D" is a true and correct copy of Plaintiffs' letter to the Defendants requesting them to produce a copy of the Delegation of Services Agreement.

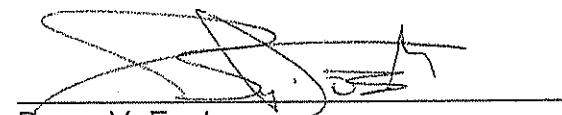
10. That attached hereto as Exhibit "E" are true and correct copies of

Defendant Byrne's Fourth Supplemental Responses to Plaintiffs' First Set of Requests for Production of Documents and correspondence of counsel sent therewith regarding the Delegation of Services Agreement.

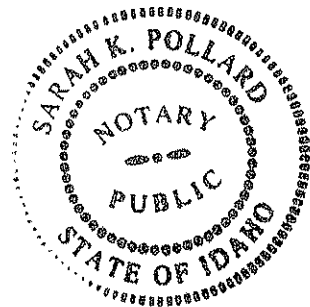
11. That attached hereto as Exhibit "F" are true and correct copies of the Defendants' Disclosures of Expert Witnesses.


12. That attached hereto as Exhibit "G" are true and correct copies of the Defendants Supplemental Disclosure of Expert Witnesses.

FURTHER YOUR AFFIANT SAITH NOT.


Byron V. Foster,
Attorney for Plaintiff

SUBSCRIBED AND SWORN to before me this 19th day of November, 2007.




Notary Public, State of Idaho
Residing in Bone
My commission expires on 10/21/09

CERTIFICATE OF SERVICE

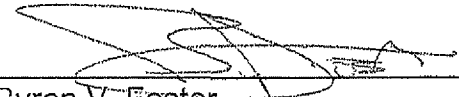
I hereby certify that on this 19 day of November, 2007, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Steven J. Hippler
GIVENS PURSLEY, LLP
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Facsimile (208) 388-1300
- ☐ E-Mail

Richard E. Hall
Keely E. Duke
HALL FARLEY OBERRECHT &
BLANTON, PA
702 West Idaho, Suite 700
PO Box 1271
Boise ID 83701

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Facsimile (208) 395-8585
- ☐ E-Mail


Byron V. Foster

DRG
Exh

COPY

2006 MAY -1 AM 10:50

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
PO Box 2774
Boise, Idaho 83701
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB # 2455

BY _____ CLERK

DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of
ROSALIE SCHMECHEL, deceased,
and ROBERT P LEWIS, KIM HOWARD
and TAMARA HALL, natural children of
ROSALIE SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A.,
and JOHN DOE and JANE DOE, I
through X,

Defendants.

Case No. CV-05-4345

AMENDED NOTICE OF TAKING
VIDEO DEPOSITION DUCES TECUM
OF THOMAS BYRNE, PA

May 18, 2006 at 9:00 a.m.

TO: THE ABOVE-NAMED PARTIES AND THEIR COUNSEL OF RECORD:



AMENDED NOTICE OF TAKING VIDEO DEPOSITION DUCES TECUM OF THOMAS BYRNE, PA - 1

YOU WILL PLEASE TAKE NOTICE That the Plaintiffs will take the testimony on oral examination of **Thomas Byrne, PA.**, pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, before a duly authorized court reporter and notary public, on the 18th day of May, 2006, commencing at 9:00 o'clock am., of said day at the offices of Hall Farley Oberrecht and Blanton, PA, 702 W. Idaho, Suite 700, Boise, Idaho 83701.

Oral examination will continue from time to time until completed. You are respectfully requested to have said deponent present for the purpose of taking such deposition at the time and place indicated, and you are hereby notified to appear and take part in the examination.

Further, deponent is required to bring with him/her to the deposition for inspection and/or copying the following documents and/or things:

1. All documents which constitute the deponent's file for Rosalie Schmechel, including but not limited to, any and all documents, records, writings, diagrams, graphs, photographs, illustrations, drawings, or any other tangible thing contained therein, whether provided by Rosalie Schmechel, the Plaintiffs, Defendants, Defendants' counsel or some other non-party or created by the deponent.

2. All documents which constitute any other separate file(s) specifically concerning Rosalie Schmechel, maintained by the deponent, including but not limited to all documents, records, writings, diagrams, graphs, photographs, illustrations, drawings, or any other tangible thing contained therein, whether provided by Rosalie Schmechel, the Plaintiffs, Defendants, Defendants' counsel or some other non-party or created by the deponent.

3. All telephone message slips, telephone logs, or any other documents which

reflect telephone calls to either Rosalie Schmechel and/or the Plaintiffs from the deponent, or which reflect telephone calls from either Rosalie Schmechel and/or the Plaintiffs received by the deponent.

4. Each and every document reviewed and/or created by the deponent in preparation for deponent's testimony in this case.

5. Each and every document regarding the care and treatment of Rosalie Schmechel, reviewed and/or created by the deponent.

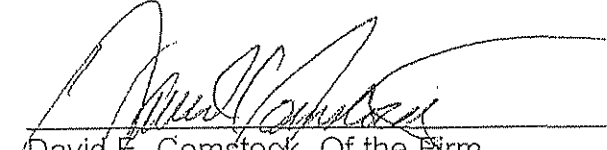
6. Any and all delegation of services agreements pertaining to Thomas Byrne, P.A.'s employment by Southern Idaho Pain Institute and Dr. Clinton Dille.

7. All documents pertaining or relating to the request, application for, investigation of, review of, grant, modification and/or denial of the hospital and surgical privileges of the deponent regarding the application of or grant of hospital or surgical privileges at any hospital, clinic, or any other medical care facility, including Southern Idaho Pain Institute.

8. A current Curriculum Vitae.

DATED this 27 day of April, 2006.

COMSTOCK & BUSH


David E. Comstock, Of the Firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of April, 2006, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Steven J. Hippler
GIVENS PURSLEY, LLP
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

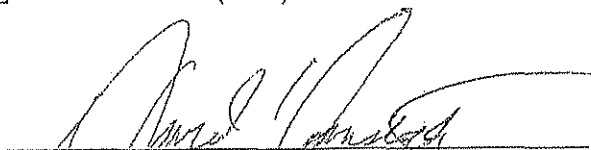
☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 388-1300

Richard E. Hall
HALL FARLEY OBERRECHT &
BLANTON, PA
702 West Idaho, Suite 700
PO Box 1271
Boise ID 83701

☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

M&M Court Reporting
PO Box 2636
Boise, ID 83701-2636

☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 345-8800


David E. Comstock

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,)
and as Surviving Spouse and)
Personal Representative of the)
Estate of ROSALIE SCHMECHEL,)
deceased, and ROBERT P. LEWIS,) Case No. CV-05-4345
KIM HOWARD and TAMARA HALL,)
natural children of ROSALIE)
SCHMECHEL, deceased,)
Plaintiffs,) VIDEOTAPED DEPOSITION OF
vs.) THOMAS J. BYRNE, P.A.
CLINTON DILLE, M.D., SOUTHERN) MAY 18, 2006
IDAHO PAIN INSTITUTE, an Idaho)
corporation, THOMAS BYRNE, P.A.,)
and JOHN DOE and JANE DOE, I)
through X,)
Defendants.)

REPORTED BY: EMILY L. NORD, CSR No. 695, RPR, Notary Public

09:59:45 1 P A to consult with the supervising physician
 09:59:51 2 before implementing a change in the narcotic pain
 09:59:55 3 management for a new patient coming into the
 09:59:57 4 clinic?
 09:59:58 5 A. Again, case by case, depending upon the
 10:00:01 6 patient and their circumstances; sometimes yes,
 10:00:06 7 sometimes no.
 10:00:09 8 Q. In Rosalie Schmechel's case, did you
 10:00:12 9 consult with Dr. Dille prior to implementing the
 10:00:18 10 change in her pain management program?
 10:00:21 11 A. No, I did not.
 10:00:24 12 Q. Why not?
 10:00:27 13 A. I was confident in my experience with
 10:00:32 14 -- in pain management and with my previous
 10:00:36 15 prescribing of medications that Mrs. Schmechel
 10:00:41 16 was prescribed, as well as the medications that
 10:00:44 17 she had been prescribed previously, to make those
 10:00:48 18 adjustments without consulting Dr. Dille on that
 10:00:52 19 day.
 10:00:53 20 Q. We'll be going through the chart here
 10:00:55 21 in a little bit --
 10:00:56 22 A. Okay.
 10:00:57 23 Q. -- and at some time later on, did you
 10:00:59 24 actually consult with Dr. Dille relative to
 10:01:03 25 Rosalie Schmechel?

10:01:04 1 A. Yes, I did.
 10:01:05 2 Q. We'll get into that later.
 10:01:06 3 A. Okay.
 10:01:08 4 Q. Would the standard of care require a
 10:01:16 5 physician's assistant to work under the
 10:01:21 6 supervision of a physician?
 10:01:24 7 A. Yes.
 10:01:26 8 Q. In that regard, did the standard of
 10:01:30 9 care call for the PA and the physician to have an
 10:01:35 10 agreement relative to the duties and obligations
 10:01:39 11 between the two of them, and the supervision?
 10:01:43 12 A. Yes.
 10:01:44 13 MR. HIPPLER: Object to the form.
 10:01:45 14 Q. (BY MR. COMSTOCK) Did you have a form
 10:01:46 15 of an agreement with Dr. Dille during the period
 10:01:49 16 of time that you were providing medical services
 10:01:53 17 to Rosalie Schmechel?
 10:01:55 18 A. Yes.
 10:01:55 19 Q. Was it in a written form?
 10:01:57 20 A. Yes.
 10:02:00 21 Q. Have you brought that document with you
 10:02:02 22 here today to produce as part of this deposition?
 10:02:06 23 A. Yes.
 10:02:12 24 MR. HALL: (Handing document to
 10:02:13 25 Mr. Comstock.)

10:02:27 1 MR. COMSTOCK: I've just received a
 10:02:28 2 five-page -- a four-page doc- -- a five-page
 10:02:35 3 document from Mr. Hall, and I'm going to have
 10:02:37 4 that marked as Exhibit 4 to the deposition, if
 10:02:40 5 you will.
 10:02:52 6 (Exhibit 4 marked.)
 10:02:53 7 Q. (BY MR. COMSTOCK) Mr. Byrne, I've just
 10:02:54 8 handed you what's been marked as Exhibit 4 . . .
 9 (Interruption.)
 10:03:04 10 Q. (BY MR. COMSTOCK) I've just handed you
 10:03:05 11 what's been marked as Exhibit No. 4, and is this
 10:03:08 12 a copy of the agreement that was in effect
 10:03:12 13 between you and the Southern Idaho Pain &
 10:03:19 14 Rehabilitation Institute --
 10:03:21 15 A. The --
 10:03:22 16 Q. -- in September of 2003?
 10:03:24 17 A. The top copy is a contract, an
 10:03:29 18 employment contract. The second page is a --
 10:03:34 19 kind of a rough job description. And then the
 10:03:37 20 remainder of the document is the Delegation of
 10:03:44 21 Services Agreement document that is provided for
 10:03:49 22 the Board of Medicine, as required.
 10:03:55 23 MR. HIPPLER: Counsel, if I can
 10:03:56 24 interject here --
 10:03:57 25 MR. COMSTOCK: Sure.

10:03:58 1 MR. HIPPLER: -- I might be able to
 10:03:59 2 help out. Just so the record is clear, because
 10:04:01 3 Mr. Byrne didn't have possession of these
 10:04:03 4 documents, in order to facilitate this deposition
 10:04:06 5 I nonetheless acquired them through my client for
 10:04:10 6 today's deposition.
 10:04:11 7 I want to point out that, with regard
 10:04:13 8 to the Delegation of Services Agreement, this was
 10:04:16 9 not in effect in 2003, as the Board of Medicine
 10:04:20 10 did not require them in -- until 2004. But we
 10:04:25 11 produced the one that was in effect thereafter.
 10:04:31 12 And in addition to the documents that
 10:04:35 13 you have -- and perhaps Mr. Hall's assistant can
 10:04:38 14 make a copy of it -- on the delegation it says
 10:04:41 15 "See attached," and I have the pages that are
 10:04:43 16 supposed to be attached that go with the 2004
 10:04:46 17 delegation agreement.
 10:04:52 18 MR. COMSTOCK: Okay. So you have just
 10:04:53 19 handed me three more pages that are the
 10:04:56 20 attachment to the Delegation of Services
 10:04:59 21 Agreement that you're representing was in effect
 10:05:02 22 in 2004?
 10:05:04 23 MR. HIPPLER: Correct.
 10:05:06 24 MR. COMSTOCK: Would you mind if I mark
 10:05:08 25 these three pages --

Page 34			Page 36		
10:05:09	1	MR. HIPPLER: That's fine.	10:07:41	1	Q. And Rosalie Schmechel, I take it, was
10:05:09	2	MR. COMSTOCK: -- or add them -- I'm	10:07:43	2	not a patient, at least on September 26 of 2003
10:05:10	3	going to add these three pages to Exhibit 4 so we	10:07:47	3	when she first came in the clinic and you changed
10:05:12	4	don't have so many multiple exhibits.	10:07:50	4	her pain management regimen, that you believed
10:05:15	5	MR. HIPPLER: That's fine.	10:07:53	5	you needed to talk to Dr. Dille about?
10:05:21	6	Q. (BY MR. COMSTOCK) Mr. Byrne, because	10:07:58	6	A. I didn't believe that I needed to talk
10:05:21	7	of that clarification I want to get -- back up	10:08:00	7	to him about Mrs. Schmechel on that day. But I
10:05:24	8	just a little bit. First of all, did you have a	10:08:04	8	did review the case, her case with him
10:05:26	9	Delegation of Services written agreement between	10:08:09	9	subsequently.
10:05:28	10	yourself and Dr. Dille and the Southern Idaho	10:08:10	10	Q. Did you review her case with him after
10:05:33	11	Pain Institute in effect in September of 2003	10:08:13	11	she died?
10:05:36	12	when you were providing PA services to Rosalie	10:08:14	12	A. No, before.
10:05:38	13	Schmechel?	10:08:18	13	Q. And again, we'll go through the chart
10:05:42	14	A. I believe there was a job description,	10:08:20	14	and perhaps you can help me with when that
10:05:47	15	which is enclosed.	10:08:22	15	occurred.
10:05:53	16	Q. But in terms of a Delegation of	10:08:23	16	A. Okay.
10:05:56	17	Services Agreement, such as the one that's	10:08:24	17	Q. Getting back to standard of care
10:05:58	18	attached to Exhibit No. 4, was there such an	10:08:25	18	questions, would you agree that the standard of
10:06:04	19	agreement, in writing, in effect in September of	10:08:32	19	care called for the PA to carefully instruct a
10:06:06	20	2003 between yourself and the Southern Idaho Pain	10:08:39	20	patient whose pain management was being shifted
10:06:09	21	Institute and Dr. Dille?	10:08:42	21	from OxyContin to methadone?
10:06:10	22	A. I think there was a -- was some	10:08:44	22	A. Yes.
10:06:13	23	documentation that was with the Board of	10:08:45	23	Q. And would that include an obligation to
10:06:15	24	Medicine, but not necessarily a Delegation of	10:08:48	24	carefully instruct relative to any increases in
10:06:18	25	Services Agreement.	10:08:51	25	the dosage that were going to take place over the
Page 35			Page 37		
10:06:19	1	There was, at some point during that	10:08:54	1	subsequent days?
10:06:21	2	period, a change in the board's recordkeeping	10:08:55	2	A. Yes.
10:06:28	3	process, per se. So documentation was with and	10:08:55	3	Q. And we call that "titrating it up";
10:06:33	4	through the Board of Medicine rather than through	10:08:58	4	correct?
10:06:36	5	the office. So the documents went to the Board	10:09:00	5	A. I'm sure that that is a term that can
10:06:41	6	of Medicine rather than -- the documentation was	10:09:02	6	be used. There's probably other terms that can
10:06:45	7	kept with the Board of Medicine in -- Boise?	10:09:06	7	be used as well.
10:06:52	8	Q. I'm trying to get a little better	10:09:07	8	Q. Would you agree that in this process of
10:06:54	9	understanding of how you and Dr. Dille worked	10:09:09	9	converting a patient from OxyContin to methadone
10:06:58	10	together with respect to any particular patient	10:09:14	10	and titrating it up, the standard of care called
10:07:00	11	in September of 2003.	10:09:18	11	for the PA to follow that patient closely in
10:07:02	12	A. Okay.	10:09:22	12	order to monitor their symptoms and their
10:07:03	13	Q. You've told me that the standard of	10:09:25	13	progress?
10:07:08	14	care didn't necessarily require you to consult	10:09:25	14	MR. HALL: Object to the form.
10:07:11	15	with Dr. Dille before implementing a change in	10:09:28	15	MR. HIPPLER: Join.
10:07:16	16	chronic pain management?	10:09:31	16	THE WITNESS: Yes.
10:07:17	17	A. On a case-by-case basis.	10:09:32	17	Q. (BY MR. COMSTOCK) Would you agree that
10:07:20	18	Q. Was that understanding in writing	10:09:33	18	the standard of care also would require the PA to
10:07:22	19	anywhere between you and Dr. Dille?	10:09:37	19	change the regimen of pain management in the face
10:07:25	20	A. No.	10:09:42	20	of any reported symptoms that would evidence a
10:07:26	21	Q. And is that the practice that you and	10:09:49	21	dangerous level of methadone accumulating within
10:07:28	22	Dr. Dille had engaged in from the time you	10:09:52	22	the patient's system?
10:07:31	23	started as a PA up to September of 2003?	10:09:57	23	A. I guess I'd need you to clarify the
10:07:36	24	A. To the best of my recollection, we	10:09:59	24	question. Are we talking specifically about
10:07:37	25	communicated regularly about patients.	10:10:01	25	Mrs. Schmechel now?

10 (Pages 34 to 37)

ORIGINAL

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
PO Box 2774
Boise, Idaho 83701
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB # 2455

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

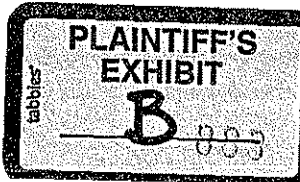
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,)	
and as Surviving Spouse and Personal	)	Case No. CV 05-4345
Representative of the Estate of)	
ROSALIE SCHMECHEL, deceased,)	
and ROBERT P LEWIS, KIM HOWARD	)	PLAINTIFFS' FIRST SET OF
and TAMARA HALL, natural children of	)	INTERROGATORIES AND
ROSALIE SCHMECHEL, deceased,	)	REQUESTS FOR PRODUCTION OF
	)	DOCUMENTS TO DEFENDANT
Plaintiffs,	)	THOMAS BYRNE, P.A.
)	
vs.)	
)	
CLINTON DILLE, M.D., SOUTHERN)	
IDAHO PAIN INSTITUTE, an Idaho)	
corporation, THOMAS BYRNE, P.A.,)	
and JOHN DOE and JANE DOE, I)	
through X,)	
)	
Defendants.)	

TO: DEFENDANT THOMAS BYRNE, P.A.

YOU WILL PLEASE TAKE NOTICE That Plaintiffs, by and through their attorneys
of record, Comstock & Bush, and pursuant to Rules 33(a), 34(a), and 26(b) of the Idaho

PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT THOMAS BYRNE, P.A. - 1



Rules of Civil Procedure, propound the following interrogatories and requests for production of documents to the above-named Defendant, Thomas Byrne, P.A., to be answered within fifteen (15) days from the date of service hereof.

In answering these interrogatories and requests for production, furnish all information or documents in the possession of your employees, officers, directors, agents, and attorneys (including investigators, experts, etc., retained by you and your attorneys), not merely information or documents known of your own personal knowledge.

The undersigned further requests permission to inspect and copy said information, evidence, and materials in your possession or your attorney's possession at a time and place mutually agreeable to counsel.

If you cannot answer the following interrogatories or requests for production in full, after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

These interrogatories and requests for production are deemed continuing, and your answers thereto are to be supplemented as additional information, knowledge, or documents become available or known to you.

Prior to answering these interrogatories and requests for production, note the following definitions:

1. "All" means "any and all."
2. "And" includes "or" and "and/or."
3. "Facts" mean all circumstances, events, and evidence pertaining to or touching upon the item in question.

4. "Communicate" or "communication" refers to every manner or means of disclosure or transfer or exchange of information, whether orally or by document and whether face-to-face, by telephone, mail, personal delivery, or otherwise.

5. "Evidencing" or "relating to" means consisting of, summarizing, describing, mentioning, or referring to.

6. Whenever the plural appears, the word shall include the singular and vice versa.

7. All pronouns denoting gender are in the masculine form and should be interpreted in light of the gender of the individual which the pronoun describes.

8. "Document" or "documents" means and includes any and all tangible things and papers, whether written recorded, graphic, typewritten, printed, photographed, or otherwise produced or reproduced and whether produced manually or by mechanical, electrical, electronic, other artificial process, or combination of these methods, and whether visible to the human eye or visible or accessible only with the aid of some device, machine, or other process (including, but not limited to papers, agreements, contracts, letters, cables, wires, notes, memoranda, correspondence, telegraphs, patents, books, reports, studies, minutes, records, accounting books, maps, plans, blueprints, sketches, charts, drawings, diagrams, photographs, movies, films, computer printouts, tape recordings, information stored on computers, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions, and recordings) of which you have any knowledge or information, referring, relating, or pertaining in any way to the subject matters in connection with which the word is used.

The term "documents" also includes, but without limitation, all originals, all identical

copies, all non-identical copies of originals (whether different from the originals because of notations made on such copies or otherwise), all file copies, and all other copies, no matter how or by whom prepared, and all drafts and revisions prepared in connection with such documents, whether used or not.

9. If any document or portion thereof, which is responsive to any request herein, is or will be withheld from production, inspection, or copying (whether because it is claimed to be work product, communication from attorney to client, or is entitled to be withheld for any other reason), please fully identify such document or portion thereof in your response, and fully state in your response the reason it is or will be withheld. In addition, if any document is practically impossible to produce for inspection or copying, please fully identify such document and the reason for the practical impossibility.

10. Any reference herein to an individual, partnership, corporation, or other entity shall include the agents, employees, representatives, and assigns of that individual or entity.

11. The specificity of any request shall not be construed as reducing the scope of any more generalized request.

12. Each document of the kind requested herein shall be produced in the manner which preserves its sequential relationship with other documents being produced and shall include the file folder and folder tabs associated with its file location, and if not apparent on the folder tabs, shall be accompanied by identification from which file it was taken and such additional source information as is necessary to enable the parties to determine the document's original (preproduction) location.

INTERROGATORIES:

INTERROGATORY NO. 1: Please state the name, address and telephone number of each and every person known to you or your attorneys who has any knowledge of, or who purports to have any knowledge of any of the facts of this case. By this Interrogatory, we seek the names, addresses and telephone numbers of all individuals who have knowledge or who purport to have knowledge of the facts of this case which pertain to issues of damages as well as liability.

INTERROGATORY NO. 2: Please state the names, addresses and telephone numbers of all persons you intend to call as factual witnesses at the trial of this case.

INTERROGATORY NO. 3: With respect to the persons you intend to call at the trial of this cause, please state the general nature of the facts to which they will testify.

INTERROGATORY NO. 4: Please identify in full and complete detail each and every document, writing, photograph, tape-recording, audio-recording, and/or videotapes or other physical evidence of which you or your attorney are aware and which pertain in any way to the underlying facts or circumstances of this litigation. In answering this Interrogatory, describe the nature and subject matter of the item, its date, if applicable; and the name, address and capacity of the person preparing it or with knowledge of it.

INTERROGATORY NO. 5: Have you, your attorneys, or any person, firm or corporation acting on your behalf, consulted with or engaged any experts in connection with this litigation? If so, please state their names and addresses, and for each such expert, describe the subject matter on which the expert is expected to testify, set forth the underlying facts or data supporting the opinion as required by Idaho Rule of Civil Procedure 26, and state the substance of the facts and opinions to which the expert is

expected to testify.

INTERROGATORY NO. 6: Please identify in full and complete detail each and every document, writing, photograph or other physical evidence which you intend to offer as an exhibit in the trial of this matter.

INTERROGATORY NO. 7: Were any statements obtained by you or on your behalf, from any person concerning the circumstances forming the basis of this lawsuit? If so, for each statement, state:

- (a) The name, address, and phone number of the person who made it;
- (b) The name, address, phone number and occupation of the person who obtained it;
- (c) The date, time, and place it was obtained;
- (d) The means by which it was preserved (e.g., writing, tape recording, etc.), and;
- (e) The name, address and phone number of the person who has custody of the original or a copy of the statement preserved.

INTERROGATORY NO. 8: Has your license to practice medicine ever been terminated, revoked, suspended, modified, altered or voluntarily relinquished? If your answer to this Interrogatory is in the affirmative, state with specificity the circumstances of each action taken against your license, the date such action was taken, the reason or reasons known to you for the taking of such action and the length of time such action was taken against you.

INTERROGATORY NO. 9: Have you ever been disciplined, counseled, admonished or sanctioned arising out of a rendering of medical care to any patient at any time under circumstances where there existed an allegation that you provided such

medical care and treatment while under the influence of prescription medications, illegal drugs and/or alcohol. If your answer is in the affirmative, state with particularity the circumstances surrounding the discipline, counsel, admonishment or sanction.

INTERROGATORY NO. 10: State with particularity the date and reasons for termination of your employment with Clinton Dille, M.D. and Southern Idaho Pain Institute.

INTERROGATORY NO. 11: Describe in detail your privileges, duties and responsibilities under the "scope of practice" as set forth in IDAPA 22.01.03, Section 028, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

INTERROGATORY NO. 12: Describe in detail your privileges, duties and responsibilities for "prescription writing" as set forth in IDAPA 22.01.03, Section 042, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

INTERROGATORY NO. 13: In your Answer on file herein, under the paragraph entitled Fourth Defense, you state: "The damages alleged to have been suffered by plaintiffs, if any, were caused, in whole or in part, by the negligence or fault of persons other than this answering defendant, for which fault or negligence this answering defendant is not responsible". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 14: In your Answer on file herein, under the paragraph entitled Fifth Defense, you state: "Plaintiff's damages, if any, were caused, in whole or in part, by a pre-existing condition, or the progression thereof, and not by the alleged negligence or fault of this answering defendant". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact,

document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 15: In your Answer on file herein, under the paragraph entitled Sixth Defense, you state: "Plaintiff's damages, if any, were caused, in whole or in part, by superseding or intervening causes, for which this answering defendant is not responsible". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 16: In your Answer on file herein, under the paragraph entitled Seventh Defense, you state: "Plaintiff's damages, if any, are barred in whole or in part, by plaintiff's failure to mitigate said damages". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 17: In your Answer on file herein, under the paragraph entitled Eighth Defense, you state: "The acts or omissions of plaintiffs and/or others constitute comparative negligence which, pursuant to Idaho Code § 6-801 and /or other applicable laws, bars or reduces plaintiffs' recovery, if any, against this answering defendant". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 18: In your Answer on file herein, under the paragraph entitled Ninth Defense, you state: "Plaintiffs' claim for damages, if any, are limited by Idaho Code § 6-1603, 6-1604, and 6-1606". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact,

document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 19: In your Answer on file herein, under the paragraph entitled Twelfth Defense, you state: "Plaintiffs have failed to join indispensable parties to this action". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 20: In your Answer on file herein, under the paragraph entitled Thirteenth Defense, you state: "Upon information and belief, one or more of the plaintiffs lack standing to pursue the causes of action in the Complaint". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 21: In your Answer on file herein, under the paragraph entitled Fourteenth Defense, you state: "Any claim or cause of action that one or more of the plaintiffs may have had against one or more of the defendants is barred in whole or in part by the applicable statute of limitations". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 22: What was your understanding of Rosalie Schmechel's sleep apnea on September 26, 2003?

INTERROGATORY NO. 23: When prescribing Methadone and Hydrocodone for Rosalie Schmechel did you consider her diagnosis of sleep apnea?

INTERROGATORY NO. 24: Describe in detail any teaching you did with

Rosalie Schmechel while she was your patient.

INTERROGATORY NO. 25: Describe in detail your understanding of pharmacokinetics as it pertains to Methadone.

INTERROGATORY NO. 26: Describe in detail your understanding of pharmacokinetics as it pertains to Hydrocodone.

INTERROGATORY NO. 27: Describe in detail how you calculated Rosalie Schmechel's conversion to Methadone.

INTERROGATORY NO. 28: State which conversion table you used relating to calculating Rosalie Schmechel's conversion to Methadone.

INTERROGATORY NO. 29: Identify the signatures on each of the entries in Southern Idaho Pain Institute medical records attached hereto as Exhibit 1.

INTERROGATORY NO. 30: Describe in detail any conversations you had with Dr. Dille concerning Rosalie Schmechel.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce copies of any and all the underlying facts or data supporting or tending to support the opinion referred to, identified, or utilized in responding to Interrogatory No. 5.

REQUEST FOR PRODUCTION NO. 2: Produce copies of every document, writing, photograph or other physical evidence which you intend to offer as an exhibit in the trial and/or referred to, identified, or utilized in responding to Interrogatory No. 6.

REQUEST FOR PRODUCTION NO. 3: Produce a copy of any insurance agreements under which any person or entities carrying on an insurance business may be liable to satisfy part or all of any judgment that may be entered against you in this action, or

to indemnify or reimburse you for payments made to satisfy such judgment.

REQUEST FOR PRODUCTION NO. 4: Produce copies of any and all statements referred to, identified, or utilized in responding to Interrogatory No. 9.

REQUEST FOR PRODUCTION NO. 5: Produce a copy of your current curriculum vitae.

REQUEST FOR PRODUCTION NO. 6: Produce all documents pertaining or relating to the request, application for, investigation of, review of, grant, modification and/or denial of your hospital and surgical privileges at any hospital, clinic, or any other medical care facility, including Southern Idaho Pain Institute.

REQUEST FOR PRODUCTION NO. 7: Produce copies of all documents reflecting any incorporation, professional association, or partnership for the practice of medicine with which you were affiliated during the period of time he rendered medical care and treatment to Rosalie Schmechel.

REQUEST FOR PRODUCTION NO. 8: Produce copies of any incident report, occurrence report or any investigatory documentation filed by, submitted by or reviewed by you, arising out of the medical care and treatment of Rosalie Schmechel.

REQUEST FOR PRODUCTION NO. 9: Produce copies of any and all delegation of services agreements pertaining to your employment by Southern Idaho Pain Institute and Dr. Clinton Dille.

REQUEST FOR PRODUCTION NO. 10: Produce a copy of any and all records pertaining to your employment by Southern Idaho Pain Institute and Dr. Clinton Dille, including but not limited to your employment file.

REQUEST FOR PRODUCTION NO. 11: Produce a copy of any application,

approval and authorization granted to you by the Board of Medicine for issuance of written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V as it set forth in IDAPA 22.01.03, Section 042, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

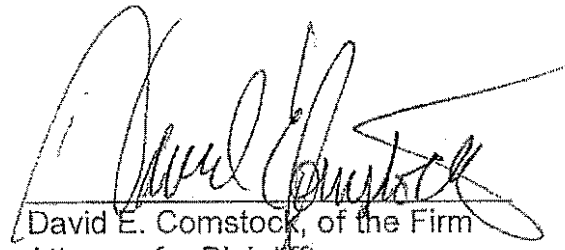
REQUEST FOR PRODUCTION NO. 12: Produce a copy of records kept by you while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute in compliance with IDAPA 22.01.03, Section 042(04), while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

REQUEST FOR PRODUCTION NO. 13: Produce a complete copy of your chart or any other records pertaining to Rosalie Schmechel not already produced in response to another request herein.

REQUEST FOR PRODUCTION NO. 14: Produce a copy of any insurance agreements under which any person or entities carrying on an insurance business may be liable to satisfy part or all of any judgment that may be entered against you in this action, or to indemnify or reimburse you for payments made to satisfy such judgment.

REQUEST FOR PRODUCTION NO. 15: Produce a complete copy of all telephone records for any telephone service in the name or possession of Thomas Byrne, P.A. and Southern Idaho Pain Institute, including office, home and cellular telephone service for the period of time during October of 2003, including but not limited to billing statements and telephone logs of incoming and outgoing calls provided in those statements by the respective telephone phone companies.

DATED this 29 day of June, 2006.


David E. Comstock, of the Firm
Attorney for Plaintiffs

COPY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
PO Box 2774
Boise, Idaho 83701
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB # 2455

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,)	
and as Surviving Spouse and Personal	)	Case No. CV 05-4345
Representative of the Estate of)	
ROSALIE SCHMECHEL, deceased,)	
and ROBERT P LEWIS, KIM HOWARD	)	NOTICE OF SERVICE OF
and TAMARA HALL, natural children of	)	DISCOVERY DOCUMENTS
ROSALIE SCHMECHEL, deceased,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
CLINTON DILLE, M.D., SOUTHERN)	
IDAHO PAIN INSTITUTE, an Idaho)	
corporation, THOMAS BYRNE, P.A.,)	
and JOHN DOE and JANE DOE, I)	
through X,)	
)	
Defendants.)	

NOTICE IS HEREBY GIVEN That on the 29 day of June, 2006, *Plaintiffs'*
First Set of Interrogatories, Requests for Production of Documents,, and Requests for
Admission to Defendant Clinton Dille, M.D. and Plaintiff's First Set of Interrogatories,
Requests for Production of Documents, and Requests for Admission to Defendant

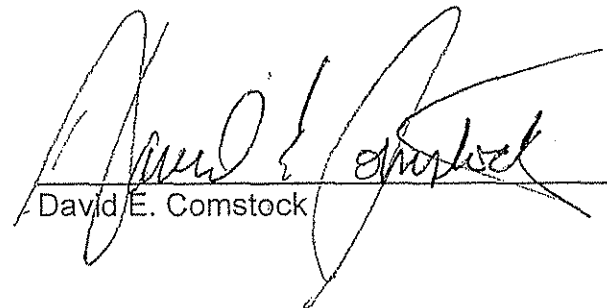
Thomas Byrne, P.A. were served upon Defendants, along with a copy of this Notice of Service of Discovery Documents, by the method indicated below, to:

Steven J. Hippler
GIVENS PURSLEY, LLP
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

☐ U.S. Mail
☒ Hand Delivery
☐ Facsimile (208) 388-1300

Richard E. Hall
HALL FARLEY OBERRECHT &
BLANTON, PA
702 West Idaho, Suite 700
PO Box 1271
Boise ID 83701

☐ U.S. Mail
☒ Hand Delivery
☐ Facsimile (208) 395-8585


David E. Comstock

ORIGINAL

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
PO Box 2774
Boise, Idaho 83701
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB # 2455

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,)	
and as Surviving Spouse and Personal	)	Case No. CV 05-4345
Representative of the Estate of)	
ROSALIE SCHMECHEL, deceased,)	
and ROBERT P LEWIS, KIM HOWARD	)	PLAINTIFFS' FIRST SET OF
and TAMARA HALL, natural children of	)	INTERROGATORIES AND
ROSALIE SCHMECHEL, deceased,	)	REQUESTS FOR PRODUCTION OF
	)	DOCUMENTS TO DEFENDANT
Plaintiffs,	)	CLINTON DILLE, M.D.
)	
vs.)	
)	
CLINTON DILLE, M.D., SOUTHERN)	
IDAHO PAIN INSTITUTE, an Idaho)	
corporation, THOMAS BYRNE, P.A.,)	
and JOHN DOE and JANE DOE, I)	
through X,)	
)	
Defendants.)	

TO: DEFENDANT CLINTON DILLE, M.D.

YOU WILL PLEASE TAKE NOTICE That Plaintiffs, by and through their attorneys
of record, Comstock & Bush, and pursuant to Rules 33(a), 34(a), and 26(b) of the Idaho
Rules of Civil Procedure, propound the following interrogatories and requests for

PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT CLINTON DILLE, M.D. - 1

production of documents to the above-named Defendant, Clinton Dille, M.D., to be answered within fifteen (15) days from the date of service hereof.

In answering these interrogatories and requests for production, furnish all information or documents in the possession of your employees, officers, directors, agents, and attorneys (including investigators, experts, etc., retained by you and your attorneys), not merely information or documents known of your own personal knowledge.

The undersigned further requests permission to inspect and copy said information, evidence, and materials in your possession or your attorney's possession at a time and place mutually agreeable to counsel.

If you cannot answer the following interrogatories or requests for production in full, after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

These interrogatories and requests for production are deemed continuing, and your answers thereto are to be supplemented as additional information, knowledge, or documents become available or known to you.

Prior to answering these interrogatories and requests for production, note the following definitions:

1. "All" means "any and all."
2. "And" includes "or" and "and/or."
3. "Facts" mean all circumstances, events, and evidence pertaining to or touching upon the item in question.
4. "Communicate" or "communication" refers to every manner or means of

disclosure or transfer or exchange of information, whether orally or by document and whether face-to-face, by telephone, mail, personal delivery, or otherwise.

5. "Evidencing" or "relating to" means consisting of, summarizing, describing, mentioning, or referring to.

6. Whenever the plural appears, the word shall include the singular and vice versa.

7. All pronouns denoting gender are in the masculine form and should be interpreted in light of the gender of the individual which the pronoun describes.

8. "Document" or "documents" means and includes any and all tangible things and papers, whether written recorded, graphic, typewritten, printed, photographed, or otherwise produced or reproduced and whether produced manually or by mechanical, electrical, electronic, other artificial process, or combination of these methods, and whether visible to the human eye or visible or accessible only with the aid of some device, machine, or other process (including, but not limited to papers, agreements, contracts, letters, cables, wires, notes, memoranda, correspondence, telegraphs, patents, books, reports, studies, minutes, records, accounting books, maps, plans, blueprints, sketches, charts, drawings, diagrams, photographs, movies, films, computer printouts, tape recordings, information stored on computers, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions, and recordings) of which you have any knowledge or information, referring, relating, or pertaining in any way to the subject matters in connection with which the word is used.

The term "documents" also includes, but without limitation, all originals, all identical copies, all non-identical copies of originals (whether different from the originals because of

notations made on such copies or otherwise), all file copies, and all other copies, no matter how or by whom prepared, and all drafts and revisions prepared in connection with such documents, whether used or not.

9. If any document or portion thereof, which is responsive to any request herein, is or will be withheld from production, inspection, or copying (whether because it is claimed to be work product, communication from attorney to client, or is entitled to be withheld for any other reason), please fully identify such document or portion thereof in your response, and fully state in your response the reason it is or will be withheld. In addition, if any document is practically impossible to produce for inspection or copying, please fully identify such document and the reason for the practical impossibility.

10. Any reference herein to an individual, partnership, corporation, or other entity shall include the agents, employees, representatives, and assigns of that individual or entity.

11. The specificity of any request shall not be construed as reducing the scope of any more generalized request.

12. Each document of the kind requested herein shall be produced in the manner which preserves its sequential relationship with other documents being produced and shall include the file folder and folder tabs associated with its file location, and if not apparent on the folder tabs, shall be accompanied by identification from which file it was taken and such additional source information as is necessary to enable the parties to determine the document's original (preproduction) location.

INTERROGATORIES:

INTERROGATORY NO. 1: Please state the name, address and telephone number

of each and every person known to you or your attorneys who has any knowledge of, or who purports to have any knowledge of any of the facts of this case. By this Interrogatory, we seek the names, addresses and telephone numbers of all individuals who have knowledge or who purport to have knowledge of the facts of this case which pertain to issues of damages as well as liability.

INTERROGATORY NO. 2: Please state the names, addresses and telephone numbers of all persons you intend to call as factual witnesses at the trial of this case.

INTERROGATORY NO. 3: With respect to the persons you intend to call at the trial of this cause, please state the general nature of the facts to which they will testify.

INTERROGATORY NO. 4: Please identify in full and complete detail each and every document, writing, photograph, tape-recording, audio-recording, and/or videotapes or other physical evidence of which you or your attorney are aware and which pertain in any way to the underlying facts or circumstances of this litigation. In answering this Interrogatory, describe the nature and subject matter of the item, its date, if applicable; and the name, address and capacity of the person preparing it or with knowledge of it.

INTERROGATORY NO. 5: Have you, your attorneys, or any person, firm or corporation acting on your behalf, consulted with or engaged any experts in connection with this litigation? If so, please state their names and addresses, and for each such expert, describe the subject matter on which the expert is expected to testify, set forth the underlying facts or data supporting the opinion as required by Idaho Rule of Civil Procedure 26, and state the substance of the facts and opinions to which the expert is expected to testify.

INTERROGATORY NO. 6: Please identify in full and complete detail each and

every document, writing, photograph or other physical evidence which you intend to offer as an exhibit in the trial of this matter.

INTERROGATORY NO. 7: Were any statements obtained by you or on your behalf, from any person concerning the circumstances forming the basis of this lawsuit? If so, for each statement, state:

- (a) The name, address, and phone number of the person who made it;
- (b) The name, address, phone number and occupation of the person who obtained it;
- (c) The date, time, and place it was obtained;
- (d) The means by which it was preserved (e.g., writing, tape recording, etc.), and;
- (e) The name, address and phone number of the person who has custody of the original or a copy of the statement preserved.

INTERROGATORY NO. 8: Has your license to practice medicine ever been terminated, revoked, suspended, modified, altered or voluntarily relinquished? If your answer to this Interrogatory is in the affirmative, state with specificity the circumstances of each action taken against your license, the date such action was taken, the reason or reasons known to you for the taking of such action and the length of time such action was taken against you.

INTERROGATORY NO. 9: Have you ever been disciplined, counseled, admonished or sanctioned arising out of a rendering of medical care to any patient at any time under circumstances where there existed an allegation that you provided such medical care and treatment while under the influence of prescription medications, illegal drugs and/or alcohol. If your answer is in the affirmative, state with particularity the

circumstances surrounding the discipline, counsel, admonishment or sanction.

INTERROGATORY NO. 10: State with particularity the date and reasons for termination of PA Byrnes' employment with Clinton Dille, M.D. and Southern Idaho Pain Institute.

INTERROGATORY NO. 11: Describe in detail PA Byrnes' privileges, duties and responsibilities under the "scope of practice" as set forth in IDAPA 22.01.03, Section 028, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

INTERROGATORY NO. 12: Describe in detail PA Byrnes' privileges, duties and responsibilities for "prescription writing" as set forth in IDAPA 22.01.03, Section 042, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

INTERROGATORY NO. 13: Was Thomas Byrne, P.A. ever disciplined, counseled, admonished or sanctioned arising out of rendering medical care to any patient at any time while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute?

INTERROGATORY NO. 14: In your Answer on file herein, under the paragraph entitled Fourth Defense, you state: "Any claim or cause of action that one or more of the plaintiffs may have had against one or more of the defendants is barred in whole or in part by the applicable statute of limitations". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 15: In your Answer on file herein, under the paragraph entitled Fifth Defense, you state: "Decedent's death was caused in whole or in part by Decedent's own negligence, or wrongful actions, and the negligence or wrongful acts of one or more of the named plaintiffs, for which Defendants are not responsible and for

which comparative responsibility limits or precludes recovery on the part of Plaintiff". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 16: In your Answer on file herein, under the paragraph entitled Sixth Defense, you state: "Other persons or entities not a party to this lawsuit are comparatively responsible for the damage alleged to have been suffered by Plaintiffs for which damages (if any) Defendants are not responsible". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 17: In your Answer on file herein, under the paragraph entitled Seventh Defense, you state: "Upon information and belief, one or more of the plaintiffs lack standing to pursue the causes of action alleged in the Complaint". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 18: In your Answer on file herein, under the paragraph entitled Eighth Defense, you state: "Plaintiffs have failed to join indispensable parties to this action". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 19: In your Answer on file herein, under the paragraph entitled Tenth Defense, you state: "Plaintiffs failed to take steps to mitigate their damages,

if any, and therefore, damages should be precluded or limited to the extent thereof." State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 20: In your Answer on file herein, under the paragraph entitled Eleventh Defense, you state: "Plaintiffs' claim for damages, if any, are limited by Idaho Code § 6-1603 and 6-1606". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 21: In your Answer on file herein, under the paragraph entitled Twelfth Defense, you state: "Plaintiff's damages, if any, were caused by superseding or intervening causes, not the fault of Defendants and for which Defendants are not responsible." State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

INTERROGATORY NO. 22: What knowledge did you have about Rosalie Schmechel's sleep apnea while she was being treated by Defendant Byrne?

INTERROGATORY NO. 23: Describe in detail any conversations you had with Rosalie Schmechel.

INTERROGATORY NO. 24: When Methadone and Hydrocodone were prescribed for Rosalie Schmechel at Southern Idaho Pain Center, was her diagnosis of sleep apnea taken into consideration?

INTERROGATORY NO. 25: Describe in detail any teaching done with Rosalie

Schmechel while she was a patient at Southern Idaho Pain Center.

INTERROGATORY NO. 26: Describe in detail your understanding of pharmacokinetics as it pertains to Methadone.

INTERROGATORY NO. 27: Describe in detail your understanding of pharmacokinetics as it pertains to Hydrocodone.

INTERROGATORY NO. 28: Describe in detail how Rosalie Schmechel's conversion to Methadone was calculated.

INTERROGATORY NO. 29: State which conversion table was used relating to calculating Rosalie Schmechel's conversion to Methadone.

INTERROGATORY NO. 30: Identify the signatures on each of the pages of Southern Idaho Pain Institute medical records attached hereto as Exhibit 1.

INTERROGATORY NO. 31: Describe in detail any conversations you had with P.A. Byrne concerning Rosalie Schmechel.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce copies of any and all the underlying facts or data supporting or tending to support the opinion referred to, identified, or utilized in responding to Interrogatory No. 5.

REQUEST FOR PRODUCTION NO. 2: Produce copies of every document, writing, photograph or other physical evidence which you intend to offer as an exhibit in the trial and/or referred to, identified, or utilized in responding to Interrogatory No. 6.

REQUEST FOR PRODUCTION NO. 3: Produce a copy of any insurance agreements under which any person or entities carrying on an insurance business may be liable to satisfy part or all of any judgment that may be entered against you in this action, or

to indemnify or reimburse you for payments made to satisfy such judgment.

REQUEST FOR PRODUCTION NO. 4: Produce copies of any and all statements referred to, identified, or utilized in responding to Interrogatory No. 7.

REQUEST FOR PRODUCTION NO. 5: Produce a copy of the current curriculum vitae for Clinton Dille, M.D.

REQUEST FOR PRODUCTION NO. 6: Produce all documents pertaining or relating to the request, application for, investigation of, review of, grant, modification and/or denial of the hospital and surgical privileges of Clinton Dille, M.D. regarding the application of or grant of hospital or surgical privileges at any hospital, clinic, or any other medical care facility, including Southern Idaho Pain Institute.

REQUEST FOR PRODUCTION NO. 7: Produce copies of all documents reflecting any incorporation, professional association, or partnership for the practice of medicine with which Clinton Dille, M.D., was affiliated during the period of time he rendered medical care and treatment to Rosalie Schmechel.

REQUEST FOR PRODUCTION NO. 8: Produce copies of any incident report, occurrence report or any investigatory documentation filed by, submitted by or reviewed by Clinton Dille, M.D., arising out of the medical care and treatment of Rosalie Schmechel.

REQUEST FOR PRODUCTION NO. 9: Produce copies of any and all delegation of services agreements pertaining to Thomas Byrne, P.A.'s employment by Southern Idaho Pain Institute and Dr. Clinton Dille.

REQUEST FOR PRODUCTION NO. 10: Produce a copy of any and all records pertaining to Thomas Byrne, PA's employment by Southern Idaho Pain Institute and Dr. Clinton Dille, including but not limited to his employment file.

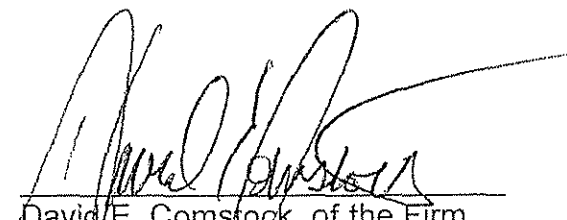
REQUEST FOR PRODUCTION NO. 11: Produce a copy of any application, approval and authorization granted to Thomas Byrne, P.A. by the Board for issuance of written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V as it set forth in IDAPA 22.01.03, Section 042, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

REQUEST FOR PRODUCTION NO. 12: Produce a copy of records kept by Thomas Byrne, P.A. while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute in compliance with IDAPA 22.01.03, Section 042(04), while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

REQUEST FOR PRODUCTION NO. 13: Produce a complete copy of your chart or any other records pertaining to Rosalie Schmechel not already produced in response to another request herein.

REQUEST FOR PRODUCTION NO. 14: Produce a complete copy of all telephone records for any telephone service in the name or possession of Clinton Dille, M.D. and Southern Idaho Pain Institute, including office, home and cellular telephone service for the period of time during October of 2003, including but not limited to billing statements and telephone logs of incoming and outgoing calls provided in those statements by the respective telephone phone companies.

DATED this 29 day of June, 2006.


David E. Comstock, of the Firm
Attorney for Plaintiffs

COPY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
PO Box 2774
Boise, Idaho 83701
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB # 2455

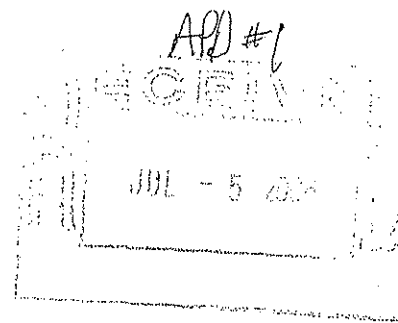
Attorneys for Plaintiffs

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2006 JUN 30 AM 10:21

BY _____ CLERK

DEPUTY



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of
ROSALIE SCHMECHEL, deceased,
and ROBERT P LEWIS, KIM HOWARD
and TAMARA HALL, natural children of
ROSALIE SCHMECHEL, deceased,
Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A.,
and JOHN DOE and JANE DOE, I
through X,

Defendants.

Case No. CV 05-4345

**NOTICE OF SERVICE OF
DISCOVERY DOCUMENTS**

NOTICE IS HEREBY GIVEN That on the 29 day of June, 2006, Plaintiffs'
First Set of Interrogatories, Requests for Production of Documents,, and Requests for
Admission to Defendant Clinton Dille, M.D. and Plaintiff's First Set of Interrogatories,
Requests for Production of Documents, and Requests for Admission to Defendant

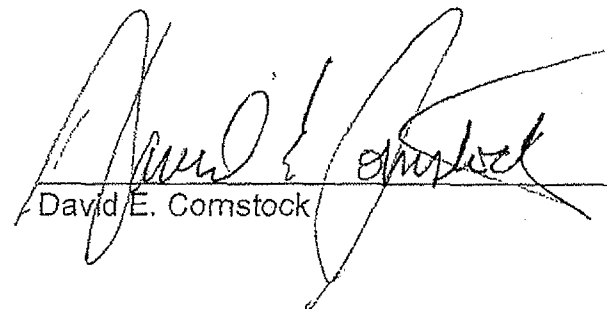
Thomas Byrne, P.A. were served upon Defendants, along with a copy of this Notice of Service of Discovery Documents, by the method indicated below, to:

Steven J. Hippler
GIVENS PURSLEY, LLP
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

☐ U.S. Mail
☒ Hand Delivery
☐ Facsimile (208) 388-1300

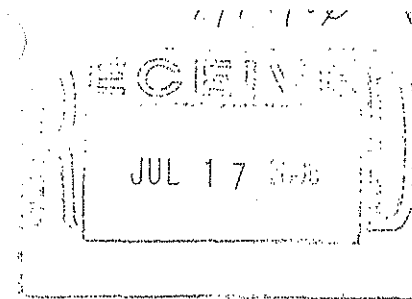
Richard E. Hall
HALL FARLEY OBERRECHT &
BLANTON, PA
702 West Idaho, Suite 700
PO Box 1271
Boise ID 83701

☐ U.S. Mail
☒ Hand Delivery
☐ Facsimile (208) 395-8585


David E. Comstock

ORIGINAL

Richard E. Hall
ISB #1253; reh@hallfarley.com
Keely E. Duke
ISB #6044; ked@hallfarley.com
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
W:\22-404.53\RFP-RES-01.DOC



Attorneys for Defendant Thomas J. Byrne

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A. and
JOHN DOE, I through X,

Defendants.

Case No. CV-05-4345

**DEFENDANT THOMAS BYRNE,
P.A.'S RESPONSES TO PLAINTIFFS'
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**



COMES NOW defendant, Thomas Byrne, P.A., by and through his attorneys of record, Hall,

Farley, Oberrecht & Blanton, P.A., and hereby responds to Plaintiff's First Set of Requests for

DEFENDANT THOMAS BYRNE, P.A.'S RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS - 1

Production of Documents to Defendant Thomas Byrne, P.A., propounded on June 29, 2006, as follows:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce copies of any and all the underlying facts or data supporting or tending to support the opinion referred to, identified, or utilized in responding to Interrogatory No. 5 (sic).

RESPONSE: Mr. Byrne objects to this Request to the extent it seeks information beyond the scope of Rule 26 of the Idaho Rules of Civil Procedure. Without waiving this objection, Mr. Byrne has not determined who he may call as an expert witness in this matter and, therefore, will supplement this Response at a later date in accordance with Idaho Rules of Civil Procedure and/or the Court's Scheduling Order.

REQUEST FOR PRODUCTION NO. 2: Produce copies of every document, writing, photograph or other physical evidence which you intend to offer as an exhibit in the trial and/or referred to, identified, or utilized in responding to Interrogatory No. 6 (sic).

RESPONSE: Mr. Byrne objects to this Response to the extent it seeks information regarding impeachment exhibits. Without waiving this objection, Mr. Byrne has not yet determined which exhibits he may use at the trial and, therefore, he will supplement this Response in accordance with the Idaho Rules of Civil Procedure and/or Scheduling Order entered by the Court in this matter.

REQUEST FOR PRODUCTION NO. 3: Produce a copy of any insurance agreements under which any person or entities carrying on an insurance business may be liable to satisfy part or all of any judgment that may be entered against you in this action, or to indemnify or reimburse you for payments made to satisfy such judgment.

RESPONSE: Mr. Byrne objects to this request as it seeks information that is not relevant,

nor likely to lead to the discovery of admissible evidence. Without waiving any objection, Mr. Byrne is in the process of this information and it will be produced once obtained. f/u

REQUEST FOR PRODUCTION NO. 4: Produce copies of any and all statements referred to, identified, or utilized in responding to Interrogatory No. 9 (sic).

RESPONSE: Mr. Byrne objects to this interrogatory to the extent the information is not relevant, nor likely to lead to the discovery of admissible evidence. Without waving this objection, Mr. Byrne states that there are no documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 5: Produce a copy of your current curriculum vitae.

RESPONSE: Mr. Byrne's curriculum vitae was produced at his deposition on May 18, 2006.

REQUEST FOR PRODUCTION NO. 6: Produce all documents pertaining or relating to the request, application for, investigation of, review of, grant, modification and/or denial of your hospital and surgical privileges at any hospital, clinic, or other medical care facility, including Southern Idaho Pain Institute. 7

RESPONSE: Mr. Byrne objects to this Request to the extent the information is not relevant, nor likely to lead to the discovery of admissible evidence. Mr. Byrne further objects to the extent such Request is unduly burdensome. Without waiving any objections, and only to the extent of Mr. Byrne's employment with Southern Idaho Pain Institute, no such documents exist.

REQUEST FOR PRODUCTION NO. 7: Produce copies of all documents reflecting any incorporation, professional association, or partnership for the practice of medicine with which you were affiliated during the period of time he rendered medical care and treatment to Rosalie Schmechel.

RESPONSE: Defendant objects to this Request on the ground that it is vague and

ambiguous. Without waiving any objection, Mr. Byrne is not in the possession, custody or control of any such documents.

REQUEST FOR PRODUCTION NO. 8: Produce copies of any incident report, occurrence report or any investigatory documentation filed by, submitted by or reviewed by you, arising out of the medical care and treatment of Rosalie Schmechel.

RESPONSE: Mr. Byrne is not aware of any documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 9: Produce copies of any and all delegation of services agreements pertaining to your employment by Southern Idaho Pain Institute and Dr. Clinton Dille.

RESPONSE: Documents responsive to this Request were produced at the deposition of Mr. Byrne on May 18, 2006.

REQUEST FOR PRODUCTION NO. 10: Produce a copy of any and all records pertaining to your employment by Southern Idaho Pain Institute and Dr. Clinton Dille, including but not limited to your employment file.

RESPONSE: Mr. Byrne objects to this Request as it seeks information that is not relevant, nor likely to lead to the discovery of admissible evidence. Additionally, Mr. Byrne objects to this Request on the grounds that it is overbroad and vague as to time and subject matter. Subject to and without waiving any objection, Mr. Byrne produced relevant documents related to his employment at his deposition on May 18, 2006. To the extent Plaintiffs' allege such documents were not produced, Mr. Byrne is not in possession or control of any such documents.

REQUEST FOR PRODUCTION NO. 11: Produce a copy of any application, approval and authorization granted to you by the Board of Medicine for issuance of written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V as it set forth in IDAPA

22.01.03, Section 042, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

RESPONSE: Mr. Byrne will attempt to obtain this information and will supplement this Response if those documents become available.

REQUEST FOR PRODUCTION NO. 12: Produce a copy of records kept by you while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute in compliance with IDAPA 22.01.03, Section 042(04), while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

RESPONSE: Mr. Byrne objects to this request on the grounds that it is overbroad and vague as to time and subject matter. Subject to and without waiving any objection, documents related to Mrs. Schmechel and responsive to this Request were previously produced at Mr. Byrne's deposition on May 18, 2006. To the extent Plaintiffs' allege such documents were not produced, Mr. Byrne is not in possession or control of any such documents.

REQUEST FOR PRODUCTION NO. 13: Produce a complete copy of your chart or any other records pertaining to Rosalie Schmechel not already produced in response to another request herein.

RESPONSE: Mr. Byrne objects to this request to the extent it seeks information protected by the attorney-client privilege. Mr. Byrne further objects to the extent this request seeks information protected by the work product doctrine and/or consulting privilege. Subject to and without waiving any objection, documents responsive to this Request were produced at Mr. Byrne's deposition on May 18, 2006. Discovery is ongoing and if additional responsive documents are found, this response will be supplemented.

REQUEST FOR PRODUCTION NO. 14: Produce a copy of any insurance agreements under which any person or entities carrying on an insurance business may be liable to satisfy part or all of any judgment that may be entered against you in this action, or to indemnify or reimburse you

for payments made to satisfy such judgment.


RESPONSE: See Response to Request for Production No. 3.

REQUEST FOR PRODUCTION NO. 15: Produce a complete copy of all telephone records for any telephone service in the name or possession of Thomas Byrne, P.A. and Southern Idaho Pain Institute, including office, home and cellular telephone service for the period of time during October of 2003, including but not limited to billing statements and telephone logs of incoming and outgoing calls provided in those statements by the respective telephone phone companies.

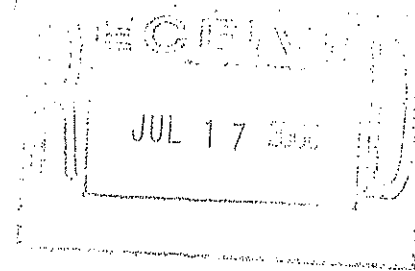
RESPONSE: Mr. Byrne objects to this Request on the grounds that it requests documents not in his possession, custody or control and is vague as to time and subject matter. Subject to and without waiving any objection, Mr. Byrne does not have any such documents.

DATED this 14th day of July, 2006.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By 
For Keely E. Duke- Of the Firm
Attorneys for Defendant Thomas J. Byrne

Richard E. Hall
ISB #1253; reh@hallfarley.com
Keely E. Duke
ISB #6044; ked@hallfarley.com
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
W:\22-404.53\WOS 03.DOC



Attorneys for Defendant Thomas J. Byrne

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A. and
JOHN DOE, I through X,

Defendants.

Case No. CV-05-4345

NOTICE OF SERVICE

NOTICE IS HEREBY GIVEN that on the 14th day of July, 2006, I caused to be
served the original of **DEFENDANT THOMAS J. BYRNE'S RESPONSES TO PLAINTIFFS'**

FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, with a copy of this

NOTICE OF SERVICE, by the method indicated below and addressed to the following:

David Comstock
Law Offices of Comstock & Bush
199 N. Capitol Blvd., Ste. 500
P.O. Box 2774
Boise, Idaho 83701
Fax No.: (208) 344-7721

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

And I caused to be served a true and correct copy of **DEFENDANT THOMAS J. BYRNE'S**


RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF

DOCUMENTS, with a copy of this **NOTICE OF SERVICE**, by the method indicated below and

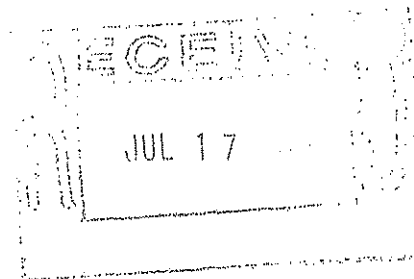
addressed to the following:

Steven J. Hippler
GIVENS PURSLEY
601 W. Bannock ST.
PO Box 2720
Boise ID 83701-2720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy


For Keely E. Duke

Steven J. Hippler ISB #4388
Givens Pursley LLP
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
sjh@givenspursley.com
S:\CLIENTS\7405\2Dille Resp ROGS and RPD.doc



7/17/06 #3

Attorneys for Defendants, Clinton Dillé, M.D. and Southern Idaho Pain Institute

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, Individually, and
as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL, natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

Vs.

CLINTON DILLÉ, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A., and
JOHN DOE and JANE DOE, I through X,

Defendants.

Case No. CV 05 4345

**DEFENDANT CLINTON DILLÉ, M.D.'S
RESPONSES TO PLAINTIFFS' FIRST
SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION**

COMES NOW, Defendant Clinton L. Dillé, M.D., by and through his counsel of
record, Givens Pursley LLP, and hereby responds to Plaintiff's First Set of Interrogatories
and Requests for Production to Defendant Clinton L. Dillé, M.D. propounded on June 29,
2006, as follows:

GENERAL OBJECTIONS

Defendant objects to all of the Interrogatories propounded by Plaintiffs in that the
total number of Interrogatories, including subparts, exceeds the number permitted by the

DEFENDANT CLINTON DILLÉ, M.D.'S RESPONSES TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION - 1

Idaho Rules of Civil Procedure, and that responding to Interrogatories contained herein does not waive this objection which applies to each and every Interrogatory contained herein.

INTERROGATORIES:

INTERROGATORY NO. 1: Please state the name, address, and telephone number of each and every person known to you or your attorneys who has any knowledge of, or who purports to have any knowledge of any of the facts of this case. By this Interrogatory, we seek the names, addresses, and telephone numbers of all individuals who have knowledge or who purport to have knowledge of the facts of this case which pertain to issues of damages as well as liability.

ANSWER TO INTERROGATORY NO. 1: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous. Defendant also objects to this Interrogatory to the extent it seeks information regarding potential impeachment witnesses who may be called at trial. Without waiving this objection, Defendant indicates that he has not determined who he will likely call at the trial of this matter, and therefore the answer will be supplemented in accordance with Idaho Rules of Civil Procedure and/or any other Scheduling Order issued by the Court in this matter. However, Defendant reserves the right to call the following individuals at trial:

1. Vaughn Schmechel
2. Robert Lewis
3. Kim Howard
4. Tamara Hall
5. Any spouses or ex-spouses of the above-identified plaintiffs and any children

of the above-identified plaintiffs.

6. Amber Zarcone

7. All health care providers who have been identified through the exchange of discovery in this case including in depositions and in records produced by any party in this matter.

8. T. J. Byrne, P.A.

9. Clinton L. Dillé, M.D.

10. Christy Davies

11. The pharmacy providers and employees who filled Mrs. Schmechel's prescriptions.

12. The contractors/employees of Mr. Schmechel.

13. The accountant/bookkeeper for Mr. Schmechel's business.

14. Glen Groben, the pathologist who performed the autopsy in this case.

15. The individual officers/deputies from the Twin Falls County Police and/or Sheriff's Department and Coroner's Office who investigated the death scene of Mrs. Schmechel and interviewed witnesses at the scene and conducted the investigation at the scene and collected evidence.

16. Any person identified by any other party in discovery in this matter.

INTERROGATORY NO. 2: Please state the names, addresses, and telephone numbers of all persons you intend to call as factual witnesses at the trial of this case.

ANSWER TO INTERROGATORY NO. 2: See objection and response to Interrogatory No. 1 above.

INTERROGATORY NO. 3: With respect to the persons you intend to call at the trial of this cause, please state the general nature of the facts to which they will testify.

ANSWER TO INTERROGATORY NO. 3: See objections and responses to Interrogatories No. 1 and 2 above. Defendant further objects to this Interrogatory to the extent that it invades the work product privilege and/or attorney client privilege.

INTERROGATORY NO. 4: Please identify in full and complete detail each and every document, writing, photograph, tape-recording, audio-recording, and/or videotapes or other physical evidence of which you or your attorney are aware and which pertain in any way to the underlying facts or circumstances of this litigation. In answering this Interrogatory, describe the nature and subject matter of the item, its date, if applicable; and the name, address and capacity of the person preparing it or with knowledge of it.

ANSWER TO INTERROGATORY NO. 4: Defendant objects to this Interrogatory as being vague, ambiguous, overbroad, and calling for information protected by the attorney-client privilege and/or work product privilege. Defendant also objects to this Interrogatory to the extent it seeks items which may be used as impeachment at the trial of this matter. Without waiving the foregoing objections, Defendant refers Plaintiffs to Mrs. Schmechel's medical records produced by the parties in this matter, any records identified during the depositions of any party or non-party in this matter, any records requested but not yet produced by any party in this matter.

INTERROGATORY NO. 5: Have you, your attorneys, or any person, firm or corporation acting on your behalf, consulted with or engaged any experts in connection with this litigation? If so, please state their names and addresses, and for each such expert, describe the subject matter on which the expert is expected to testify, set forth the underlying facts or data supporting the opinion as required by Idaho Rule of Civil Procedure 26, and state the substance of the facts and opinions to which the expert is expected to testify.

ANSWER TO INTERROGATORY NO. 5: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous, and as calling for information protected by the work product privilege and as seeking information outside that which is properly discoverable. Without waiving this objection, Defendant has not yet determined who he may call as an expert witness in this matter and, therefore will supplement this Interrogatory at a later date

in accordance with the Idaho Rules of Civil Procedure and/or any Scheduling Order entered by the Court in this matter pertaining to the disclosure of expert witnesses.

INTERROGATORY NO. 6: Please identify in full and complete detail each and every document, writing, photograph, or other physical evidence which you intend to offer as an exhibit in the trial of this matter.

ANSWER TO INTERROGATORY NO. 6: See objections and answer to Interrogatory No. 4.

INTERROGATORY NO. 7: Were any statements obtained by you or on your behalf, from any person concerning the circumstances forming the basis of this lawsuit? If so, for each statement, state:

- (a) The name, address, and phone number of the person who made it;
- (b) The name, address, phone number, and occupation of the person who obtained it;
- (c) The date, time, and place it was obtained;
- (d) The means by which it was preserved (e.g., writing, tape recording, etc.), and;
- (e) The name, address, and phone number of the person who has custody of the original or a copy of the statement preserved.

ANSWER TO INTERROGATORY NO. 7: Defendant objects to this Interrogatory to the extent it is vague and ambiguous and to the extent that it calls for or seeks information protected by the attorney-client privilege and/or work product doctrine. Without waiving these objections, Defendant is not aware of any non-privileged statements being made other than in depositions and records produced by the parties thus far in the proceedings.

INTERROGATORY NO. 8: Has your license to practice medicine ever been terminated, revoked, suspended, modified, altered or voluntarily relinquished? If your answer to this Interrogatory is in the affirmative, state with specificity the circumstances of each action

taken against your license, the date such action was taken, the reason or reasons known to you for the taking of such action and the length of time such action was taken against you.

ANSWER TO INTERROGATORY NO. 8: Defendant objects to this Interrogatory to the extent it seeks information which is privileged or which is irrelevant and not likely to lead to the discovery of admissible evidence. Without waiving this objection, Defendant answers this Interrogatory in the negative.

INTERROGATORY NO. 9: Have you ever been disciplined, counseled, admonished or sanctioned arising out of a rendering of medical care to any patient at any time under circumstances where there existed an allegation that you provided such medical care and treatment while under the influence of prescription medications, illegal drugs and/or alcohol. If your answer is in the affirmative, state with particularity the circumstances surrounding the discipline, counsel, admonishment or sanction.

ANSWER TO INTERROGATORY NO. 9: Defendant objects to this Interrogatory as being overly broad, vague, ambiguous, is not calculated to lead to the discovery of admissible evidence and to the extent it seeks information protected by the state and federal peer review privileges. Without waiving said objections, Defendant responds as follows: No.

INTERROGATORY NO. 10: State with particularity the date and reasons for termination of PA Byrnes' employment with Clinton Dille, M.D. and Southern Idaho Pain Institute.

ANSWER TO INTERROGATORY NO. 10: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous, and to the extent it factually or legally concludes or suggests that Mr. Byrne was employed by Clinton L. Dillé, M.D. in any manner at any time. Without waiving said objections, Defendant Dillé states as follows: see deposition testimony of Dr. Dillé and of Mr. Byrne. Furthermore, Defendant states that Mr. Byrne resigned his employment voluntarily in 2004 in order to relocate his family to North Idaho where he has other family ties.

INTERROGATORY NO. 11: Describe in detail PA Byrnes' privileges, duties and responsibilities under the "scope of practice" as set forth in IDAPA 22.01.03, Section 028, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

ANSWER TO INTERROGATORY NO. 11: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous and as calling for a legal conclusion and as misstating the facts and law to the extent that it suggests or concludes that Mr. Byrne was employed by Clinton L. Dillé, M.D. at any time. Without waiving said objections, Defendant refers plaintiff to the relevant IDAPA sections cited that were in effect in September and October of 2003, as well as the deposition testimony of Dr. Dillé and Mr. Byrne, the employment contract of Mr. Byrne (produced during Mr. Byrne's deposition), as well as his job description (also produced during his deposition), and currently in the possession of Plaintiffs.

INTERROGATORY NO. 12: Describe in detail PA Byrnes' privileges, duties and responsibilities for "prescription writing" as set forth in IDAPA 22.01.03, Section 042, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

ANSWER TO INTERROGATORY NO. 12: See objections and response to Interrogatory No. 11 above. Without waiving the objections incorporated in this response by reference to the objections stated in Interrogatory No. 11, Defendant further states that Mr. Byrne had both state and federal authority to prescribe all medications which were prescribed to Mrs. Schmechel in this case, including all controlled substances and could do so as an independent practitioner utilizing his own licenses and certificates and without the permission or preauthorization of Dr. Dillé or any other provider.

INTERROGATORY NO. 13: Was Thomas Byrne, P.A. ever disciplined, counseled, admonished or sanctioned arising out of rendering medical care to any patient at any time while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute?

ANSWER TO INTERROGATORY NO. 13: Defendant objects to this Interrogatory as being overly broad, vague, ambiguous, not calculated to lead to the discovery of admissible evidence and to the extent it violates or seeks information which would be protected by applicable federal and state peer review statutes. Defendant further objects to the Interrogatory to the extent it supposes or suggests that Mr. Byrne was employed by Clinton Dillé, M.D. Without waiving said objections, Defendant states that Mr. Byrne was not, to Dr. Dillé's knowledge, disciplined, admonished or sanctioned with respect to any medical care provided to Mrs. Schmechel in this matter. The term "counseled" as used in the Interrogatory is vague and ambiguous, but to the extent the use of the term is meant to suggest any type of criticism or corrective action was levied against or imposed on Mr. Byrne by Dr. Dillé or the Southern Idaho Pain Institute, then the Defendant, Dr. Dillé, states that Mr. Byrne was not so counseled. Defendant further refers Plaintiffs to the deposition testimony of Dr. Dillé in this matter.

INTERROGATORY NO. 14: In your Answer on file herein, under the paragraph entitled Fourth Defense, you state: "Any claim or cause of action that one or more of the plaintiffs may have had against one or more of the defendants is barred in whole or in part by the applicable statute of limitations". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

ANSWER TO INTERROGATORY NO. 14: Defendant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product privilege or doctrine. Without waiving said objections, Defendant states that he is still investigating whether Plaintiffs' causes of action against Southern Idaho Pain Institute are barred by the statute of limitation as the statute of limitation for such claim was not tolled by the filing of a pre-litigation screening panel hearing.

INTERROGATORY NO. 15: In your Answer on file herein, under the paragraph entitled Fifth Defense, you state: "Decedent's death was caused in whole or in part by Decedent's own negligence, or wrongful actions, and the negligence or wrongful acts of one or more of the named plaintiffs, for which Defendants are not responsible and for which comparative responsibility limits or precludes recovery on the part of Plaintiff". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

ANSWER TO INTERROGATORY NO. 15: See objection to Interrogatory No. 14 above. Defendant further states that discovery in this matter has just begun and defendants are still developing facts which may support the defense identified in Interrogatory No. 15. Without waiving said objection, Defendant states that according to the deposition testimony of Plaintiffs, Mrs. Schmechel was repeatedly told by her family members to seek medical assistance prior to her death and she failed to do so and that the Plaintiffs themselves failed to take steps to protect Mrs. Schmechel despite their perception that Mrs. Schmechel needed medical intervention and may not have been capable of seeking the same on her own. Defendant further believes it is possible Mrs. Schmechel may not have taken medications as advised and that she may have failed to use her C-pap machine as advised. Other facts may be developed during the course of discovery which would support Defendant's defense.

INTERROGATORY NO. 16: In your Answer on file herein, under the paragraph entitled Sixth Defense, you state: "Other persons or entities not a party to this lawsuit are comparatively responsible for the damage alleged to have been suffered by Plaintiffs for which damages (if any) Defendants are not responsible". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

ANSWER TO INTERROGATORY NO. 16: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous. Without waiving said objections, Defendant states that discovery in this matter is just beginning and the Defendant is still in the process of gathering facts to support the defense identified in the Interrogatory. As Defendant develops such facts and consistent with the Court's Scheduling Order for disclosure of expert witnesses, Defendant will supplement this Interrogatory response.

INTERROGATORY NO. 17: In your Answer on file herein, under the paragraph entitled Seventh Defense, you state: "Upon information and belief, one or more of the plaintiffs lack standing to pursue the causes of action alleged in the Complaint". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

ANSWER TO INTERROGATORY NO. 17: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous. Without waiving said objections, Defendant states that discovery in this matter is just beginning, and Defendant is still gathering facts to determine whether all of the Plaintiffs are appropriate heirs under Idaho's wrongful death statute.

INTERROGATORY NO. 18: In your Answer on file herein, under the paragraph entitled Eighth Defense, you state: "Plaintiffs have failed to join indispensable parties to this action". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

ANSWER TO INTERROGATORY NO. 18: Defendant states that discovery in this matter is just beginning and Defendants are still in the position of trying to determine whether facts exist which may support this defense. At the time of filing of the Answer by

Defendant, it was unclear to Defendant as to whether all heirs had been appropriately named as parties to this action.

INTERROGATORY NO. 19: In your Answer on file herein, under the paragraph entitled Tenth Defense, you state: "Plaintiffs failed to take steps to mitigate their damages, if any, and therefore, damages should be precluded or limited to the extent thereof." State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

ANSWER TO INTERROGATORY NO. 19: Defendant objects to this Interrogatory as overly broad, vague, and ambiguous, and calls for the work product of Defendant's counsel. Without waiving said objection, Defendant states that discovery in this matter is just beginning and Defendants are still compiling identifying facts which may support this defense identified in the Interrogatory. Defendant further responds to this Interrogatory as follows: see response to Interrogatories Nos. 15 and 16. Furthermore, with respect to any economic loss, Plaintiffs may claim as a result of the death of Mrs. Schmechel, Defendant is still investigating whether Mr. Schmechel acted reasonably in minimizing the impact on his business and the family finances following Mrs. Schmechel's death. The discovery regarding such defense is still ongoing, however.

INTERROGATORY NO. 20: In your Answer on file herein, under the paragraph entitled Eleventh Defense, you state: "Plaintiffs' claim for damages, if any, are limited by Idaho Code § 6-1603 and 6-1606". State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

ANSWER TO INTERROGATORY NO. 20: Defendant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product

doctrine and further objects to the Interrogatory to the extent it seeks a legal conclusion. Without waiving these objections, Defendant responds as follows: discovery is ongoing and defendants are still seeking facts to support this defense, in particular, the defense related to Idaho's collateral source rule as referenced in Defendant's Answer. Furthermore, Defendant states that this case is governed by Idaho's cap on non-economic damages of \$250,000.00 as a collective total for all claims asserted in this matter. Defendant further refers Plaintiffs to the particular statutes referenced in the answer.

INTERROGATORY NO. 21: In your Answer on file herein, under the paragraph entitled Twelfth Defense, you state: "Plaintiffs damages, if any, were caused by superseding or intervening causes, not the fault of Defendants and for which Defendants are not responsible." State with particularity the factual basis for this allegation, and set forth in full and complete detail, each and every witness, fact, document, and/or occurrence which you contend supports said allegation.

ANSWER TO INTERROGATORY NO. 21: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous and as calling for information protected by the attorney work product privilege. Without waiving said objections, Defendant responds as follows: discovery in this matter is ongoing and just beginning. Defendant is still gathering facts which they believe support this defense which include Mrs. Schmechel's underlying health problems and/or conditions which may have caused her death rather than the alleged negligence of the Defendant or Defendants. Defendant also refers Plaintiffs to his objections and answers to Interrogatories Nos. 15 and 16.

INTERROGATORY NO. 22: What knowledge did you have about Rosalie Schmechel's sleep apnea while she was being treated by Defendant Byrne?

ANSWER TO INTERROGATORY NO. 22: Defendant objects to this Interrogatory to the extent it is overly broad, vague and ambiguous. Without waiving said objections,

Defendant was aware on or about Monday, September 29th, that Mr. Byrne was treating Rosalie Schmechel and that Mrs. Schmechel had obstructive sleep apnea for which she was being treated with C-pap. Defendant also states as follows: see the deposition testimony of Dr. Dillé.

INTERROGATORY NO. 23: Describe in detail any conversations you had with Rosalie Schmechel.

ANSWER TO INTERROGATORY NO. 23: Defendant does not believe he had any conversations with Rosalie Schmechel.

INTERROGATORY NO. 24: When Methadone and Hydrocodone were prescribed for Rosalie Schmechel at Southern Idaho Pain Center, was her diagnosis of sleep apnea taken into consideration?

ANSWER TO INTERROGATORY NO. 24: Defendant objects to this Interrogatory as being overly broad, vague, ambiguous, and calling for speculation on the part of this Answering Defendant. Without waiving said objections, Defendant states as follows: It is this Defendant's belief that Mr. Byrne took into account Mrs. Schmechel's underlying diagnosis of obstructive sleep apnea and her prescription for C-pap for treatment of the same when he treated Mrs. Schmechel. See also the deposition transcripts of Mr. Byrne and Dr. Dillé.

INTERROGATORY NO. 25: Describe in detail any teaching done with Rosalie Schmechel while she was a patient at Southern Idaho Pain Center.

ANSWER TO INTERROGATORY NO. 25: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous. Defendant further states that he did not do any teaching for Mrs. Schmechel as he never saw or treated Mrs. Schmechel. Defendant refers Plaintiffs to the medical records of Mrs. Schmechel from the Southern Idaho Pain Institute, as well as the deposition testimony of Mr. Byrne and Dr. Dillé.

INTERROGATORY NO. 26: Describe in detail your understanding of pharmacokinetics as it pertains to Methadone.

ANSWER TO INTERROGATORY NO. 26: Defendant objects to this Interrogatory as being vague and ambiguous and overly broad. Without waiving said objections, Defendant states as follows: see deposition transcript of Dr. Dillé.

INTERROGATORY NO. 27: Describe in detail your understanding of pharmacokinetics as it pertains to Hydrocodone.

ANSWER TO INTERROGATORY NO. 27: See objection and answer to Interrogatory No. 26 above.

INTERROGATORY NO. 28: Describe in detail how Rosalie Schmechel's conversion to Methadone was calculated.

ANSWER TO INTERROGATORY NO. 28: See objection and answer to Interrogatory No. 25, above. See also the deposition transcript of Dr. Dillé and Mr. Byrne.

INTERROGATORY NO. 29: State which conversion table was used relating to calculating Rosalie Schmechel's conversion to Methadone.

ANSWER TO INTERROGATORY NO. 29: See objection and answer to Interrogatories Nos. 25 and 28, as well as the deposition transcripts of Mr. Byrne and Dr. Dillé.

INTERROGATORY NO. 30: Identify the signatures on each of the pages of Southern Idaho Pain Institute medical records attached hereto as Exhibit 1.

ANSWER TO INTERROGATORY NO. 30: Defendant objects to this Interrogatory as being unintelligible as there was no Exhibit 1 attached to the discovery request and therefore, the Defendant cannot identify the signatures contained in Exhibit 1.

INTERROGATORY NO. 31: Describe in detail any conversations you had with P.A. Byrne concerning Rosalie Schmechel.

ANSWER TO INTERROGATORY NO. 31: Defendant objects to this Interrogatory as being overly broad, vague, and ambiguous. Without waiving said objections, Defendant states as follows: see deposition transcript of Dr. Dillé and Mr. Byrne. Defendant also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrines.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce copies of any and all the underlying facts or data supporting or tending to support the opinion referred to, identified, or utilized in responding to Interrogatory No. 5.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Defendant objects to this Request for Production as being unintelligible. Defendant also incorporates the objections in Answer to Interrogatory No. 5 herein as if set forth in full.

REQUEST FOR PRODUCTION NO.2: Produce copies of every document, writing, photograph or other physical evidence which you intend to offer as an exhibit in the trial and/or referred to, identified, or utilized in responding to Interrogatory No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: See objection and response to Interrogatories Nos. 4 and 6 above as if set forth in full herein.

REQUEST FOR PRODUCTION NO. 3: Produce a copy of any insurance agreements under which any person or entities carrying on an insurance business may be liable to satisfy part or all of any judgment that may be entered against you in this action, or to indemnify or reimburse you for payments made to satisfy such judgment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Defendant's counsel has requested a copy of the applicable insurance policy which he believes to be responsive to this Request for Production, and without making any representation as to coverage or non-coverage will produce the same upon receipt by way of supplementation.

REQUEST FOR PRODUCTION NO. 4: Produce copies of any and all statements referred to, identified, or utilized in responding to Interrogatory No. 7.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: See objections and response to Interrogatory No. 7 which are incorporated herein as if set forth in full.

REQUEST FOR PRODUCTION NO. 5: Produce a copy of the current curriculum vitae for Clinton Dille, M.D.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: A copy of the document requested was produced at the deposition of Dr. Dillé and is in the possession of Plaintiffs.

REQUEST FOR PRODUCTION NO. 6: Produce all documents pertaining or relating to the request, application for, investigation of, review of, grant, modification and/or denial of the hospital and surgical privileges of Clinton Dille, M.D. regarding the application of or grant of hospital or surgical privileges at any hospital, clinic, or any other medical care facility, including Southern Idaho Pain Institute.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Defendant objects to this Interrogatory as calling for information protected by state and federal peer review privileges, as well as being overly broad, vague, ambiguous, unduly burdensome and seeking information not calculated to lead to the discovery of admissible evidence. Without waiving said objections, Defendant states as follows: such documents are not in defendant's custody or control but are believed to be in the possession of and the property of those hospitals and facilities at which Dr. Dillé has or has had privileges.

REQUEST FOR PRODUCTION NO. 7: Produce copies of all documents reflecting any incorporation, professional association, or partnership for the practice of medicine with which Clinton Dille, M.D., was affiliated during the period of time he rendered medical care and treatment to Rosalie Schmechel.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Defendant objects to this Request for Production as seeking information not reasonably calculated to lead to the discovery of admissible evidence and seeking information which may be confidential proprietary business information. Without waiving said objection, Defendant states as follows: attached is a copy of the Secretary of State's website verification of Southern Idaho Pain Institute's corporate status which was the entity in which Dr. Dillé was the owner of and employee in during the time that Mrs. Schmechel was cared for by Mr. Byrne, an employee of Southern Idaho Pain Institute. This website and documents available through the Secretary of State's website are as accessible to Plaintiffs as this Defendant.

REQUEST FOR PRODUCTION NO. 8: Produce copies of any incident report, occurrence report or any investigatory documentation filed by, submitted by or reviewed by Clinton Dille, M.D., arising out of the medical care and treatment of Rosalie Schmechel.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Defendant objects to this Request for Production as seeking information protected by the Peer Review privilege as set forth in Idaho statutes and is seeking information not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request for Production as seeking information protected by the attorney-client privilege and/or work product privilege. Without waiving said objection, Defendant states that there are no such reports or the documents requested except documents which were prepared by or at the direction of Defendant's counsel and protected by the attorney-client privilege.

REQUEST FOR PRODUCTION NO. 9: Produce copies of any and all delegation of services agreements pertaining to Thomas Byrne, P.A.'s employment by Southern Idaho Pain Institute and Dr. Clinton Dille.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Defendant objects to this Request for Production as being overly broad, vague, and ambiguous. Without waiving said

objections, Mr. Byrne's employment agreement and job description in effect at the time that Mr. Byrne provided care to Mrs. Schmechel was produced at the deposition of Mr. Byrne as was the Delegation of Services Agreements in the form promulgated by the Board of Medicine in the year 2004 subsequent to the death of Mrs. Schmechel.

REQUEST FOR PRODUCTION NO. 10: Produce a copy of any and all records pertaining to Thomas Byrne, PA's employment by Southern Idaho Pain Institute and Dr. Clinton Dille, including but not limited to his employment file.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Defendant objects to this Request for Production as being overly broad, vague, ambiguous, unduly burdensome and seeking confidential and proprietary information, information not calculated to lead to the discovery of admissible evidence and information which invades the privacy of Mr. Byrne. Defendant further objects to this Request for Production to the extent it assumes and/or implies that Dr. Dillé was an employer of Mr. Byrne. Without waiving said objections, Defendant states that Mr. Byrne's employment agreement and job description, as well as a Delegation of Services Agreement in effect in 2004 were produced at the deposition of Mr. Byrne. Any other documents contained in Mr. Byrne's employment file are either privileged, subject to the objections outlined above, or not in any way related to the facts in dispute in this lawsuit and thus, not calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 11: Produce a copy of any application, approval and authorization granted to Thomas Byrne, P.A. by the Board for issuance of written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V as set forth in IDAPA 22.01.03, Section 042, while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Defendant objects to this Request for Production as being overly broad, vague, and ambiguous, and to the extent it

calls for a legal conclusion or otherwise implies or suggests that Mr. Byrne was an employee of Dr. Dillé. Without waiving said objections, Defendant responds as follows: Defendant Dillé is not in possession or control of such application referenced in the Request for Production.

REQUEST FOR PRODUCTION NO. 12: Produce a copy of records kept by Thomas Byrne, P.A. while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute in compliance with IDAPA 22.01.03, Section 042(04), while employed by Clinton Dille, M.D. and Southern Idaho Pain Institute.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: See objections to Response to Request for Production Nos. 10 and 11 which are incorporated herein as if set forth in full. Without waiving said objections, Defendant states that any documents responsive to the request of which Defendant is in control or possession and of which this Defendant is aware are the medical records of Mrs. Schmechel, copies of which have been produced throughout the course of discovery in this case and the originals of which will be made available at a time and place convenient to the Defendant as his office in Twin Falls, Idaho.

REQUEST FOR PRODUCTION NO. 13: Produce a complete copy of your chart or any other records pertaining to Rosalie Schmechel not already produced in response to another request herein.


RESPONSE TO REQUEST FOR PRODUCTION NO. 13: See objection and response to Request for Production No. 12 above. Defendant further objects to the extent it seeks information protected by the attorney-client and/or work product privileges.

REQUEST FOR PRODUCTION NO. 14: Produce a complete copy of all telephone records for any telephone service in the name or possession of Clinton Dille, M.D. and Southern Idaho Pain Institute, including office, home and cellular telephone service for the period of time during October of 2003, including but not limited to billing statements and

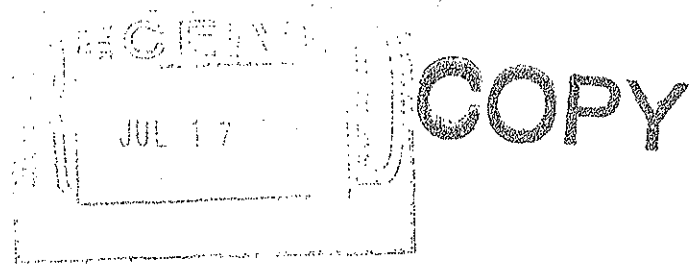
telephone logs of incoming and outgoing calls provided in those statements by the respective telephone phone companies.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Defendant objects to this Request for Production as being overly broad, unduly burdensome, and is seeking documents outside the control and possession of the answering Defendant. Notwithstanding the objection, and without waiving the same, Defendant Dillé is in the process of searching his records to determine whether he has any such records that are responsive to the Request for Production. Defendant objects to the production of any such documents which identify telephone numbers of patients other than Mrs. Schmechel and object to the production of the same by this Defendant or by any other party or non-party without Dr. Dillé having the opportunity to first redact any such telephone numbers or other identifying information of patients other than Mrs. Schmechel in compliance with patient confidentiality laws, including Idaho's physician/patient privilege, as well as the Health Insurance Portability and Accountability Act and implementing regulations.

DATED this 64 day of July 2006. GIVENS PURSLEY, LLP

By 
STEVEN J. HIPPLER
Attorneys for Defendants
CLINTON L. DILLÉ, M.D. and
SOUTHERN IDAHO PAIN
INSTITUTE

Steven J. Hippler ISB #4388
Givens Pursley LLP
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
sjh@givenspursley.com
S:\CLIENTS\1740512\NOS-Response Int Rfp.doc



Attorneys for Defendants, Clinton Dillé, M.D. and Southern Idaho Pain Institute

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, Individually, and
as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL, natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

Vs.

CLINTON DILLÉ, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A., and
JOHN DOE and JANE DOE, I through X,

Defendants.

Case No. CV 05 4345

**NOTICE OF SERVICE OF DISCOVERY
RESPONSES**

NOTICE IS HEREBY GIVEN that on 14 July 2006, the original of DEFENDANT
CLINTON L. DILLÉ' M.D.'s RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION was served upon Requesting Party, and a copy of DEFENDANT
CLINTON L. DILLÉ' M.D.'s RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND

REQUESTS FOR PRODUCTION was served on the following parties, with a copy of this Notice of

Service of Discovery Responses, by the method indicated below:

David E. Comstock
COMSTOCK & BUSH
199 N. Capitol Blvd. #500
P.O. Box 2774
Boise, ID 83701-2774
Attorneys for Plaintiff

☒ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax 344-7721


Richard E. Hall
Keely E. Duke
Hall Farley Oberrecht & Blanton PA
702 W. Idaho Street
P.O. Box 1271
Boise, ID 83701-1271
Attorneys for Defendant, T. J. Byrne P.A.

☒ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax 395-8585

DATED this 14 day of July 2006.

GIVENS PURSLEY, LLP

By


STEVEN J. HIPPLER
Attorneys for Defendants Clinton L.
Dillé, M.D. and Southern Idaho
Pain Institute

Schmechel
Comstock

Law Offices OF

COMSTOCK & BUSH

David E. Comstock

199 N. Capitol Blvd., Suite 500 – Post Office Box 2774
Boise, Idaho 83701-2774

Telephone: (208) 344-7700
Facsimile: (208) 344-7721

October 4, 2007

VIA FACSIMILE

Keely E. Duke
HALL FARLEY OBERRECHT & BLANTON, PA
702 West Idaho, Suite 700
PO Box 1271
Boise ID 83701

VIA FACSIMILE

Steven J. Hippler
GIVENS PURSLEY, LLP
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

RE: *Schmechel v. Dille, M.D., et al.*

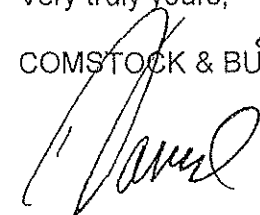
Dear Counsel:

The rules for licensure of physician's assistants in effect in 2003, IDAPA 22.01.03, require a written Delegation of Services Agreement, signed and dated by the physician assistant and supervising physician. These rules have been in effect since March 19, 1999.

We specifically requested a copy of all Delegation of Services agreements in Request No. 9, Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Defendant Byrne, and in Request No. 9, Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Defendant Clinton Dille, M.D. To date, the 2003 Delegation of Services agreement has not been provided. Kindly supplement your responses.

Very truly yours,

COMSTOCK & BUSH



David E. Comstock

DEC/sf





Fax Call Report

1

COMSTOCK & BUSH
208-344-7721
Oct-04-2007 13:04

Job	Date/Time	Type	Identification	Duration	Pages	Result
9660	Oct-04-2007 13:03	Send	3881300	1:11	2	Success

Law Offices Of
COMSTOCK & BUSH
Trial Attorneys & Counselors At Law

David E. Comstock

199 N. Capitol Blvd., Suite 500 - Post Office Box 2774
Boise, Idaho 83701-2774

Telephone (208) 344-7700
Facsimile (208) 344-7721

FACSIMILE COVER SHEET

TO: Keely Duke
395-8585

Steven J. Hippler
388-1300

FROM: David E. Comstock

DATE: October 4, 2007

RE: *Schmechel v. Dille, et al.*

COMMENTS: Please see the attached correspondence.

Including this cover sheet, this facsimile contains 2 page(s).

CONFIDENTIALITY NOTICE

The information in this facsimile is confidential and intended only for the use of the addressee. The data transmitted is attorney privileged and may be exempt from disclosure. Do not copy or distribute to anyone other than the addressee. Reliance on this data by other than the intended recipient is prohibited. Please notify us immediately if you have received this communication in error. Upon notification we will arrange for return of the fax copies to Comstock & Bush. Additionally, if you do not receive all of the pages of this facsimile, please notify our office as soon as possible. Thank you for your cooperation. If you have any problems receiving this fax, please contact the operator at (208) 344-7700.



Fax Call Report

1

COMSTOCK & BUSH
208-344-7721
Oct-04-2007 13:03

Job	Date/Time	Type	Identification	Duration	Pages	Result
9659	Oct-04-2007 13:02	Send	3958585	0:52	2	Success

Richard E. Hall
ISB #1253; reh@hallfarley.com
Keely E. Duke
ISB #6044; ked@hallfarley.com
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
W:\2\2-404.53\RFP-Res-01.3RD.SUPP.doc

Attorneys for Defendant Thomas J. Byrne

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A. and
JOHN DOE, I through X,

Defendants.

Case No. CV-05-4345

**DEFENDANT THOMAS BYRNE,
P.A.'S FOURTH SUPPLEMENTAL
RESPONSES TO PLAINTIFFS'
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**



COMES NOW defendant, Thomas Byrne, P.A., by and through his attorneys of record, Hall,

Farley, Oberrecht & Blanton, P.A., and hereby responds to Plaintiff's First Set of Requests for

DEFENDANT THOMAS BYRNE, P.A.'S FOURTH SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS - I

Production of Documents to Defendant Thomas Byrne, P.A., propounded on June 29, 2006, as follows:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 9: Produce copies of any and all delegation of services agreements pertaining to your employment by Southern Idaho Pain Institute and Dr. Clinton Dille.

RESPONSE: Documents responsive to this Request were produced at the deposition of Mr. Byrne on May 18, 2006.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Attached hereto as Exhibit A is a true and correct copy of the Delegation of Services Agreement dated April 15, 2003.

DATED this 19th day of October, 2007.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By Keely E. Duke
Keely E. Duke - Of the Firm
Attorneys for Defendant Thomas J. Byrne

Richard E. Hall
ISB #1253; reh@hallfarley.com
Keely E. Duke
ISB #6044; ked@hallfarley.com
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
W:\212-404,53\NOS 14.DOC

Attorneys for Defendant Thomas J. Byrne

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A. and
JOHN DOE, through X,

Defendants.

Case No. CV-05-4345

NOTICE OF SERVICE

NOTICE IS HEREBY GIVEN that on the 10th day of October, 2007, I caused to be
served the *original* of DEFENDANT THOMAS BYRNE, P.A.'S FOURTH SUPPLEMENTAL

RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF

DOCUMENTS, with a copy of this NOTICE OF SERVICE, by the method indicated below and

addressed to the following:

David Comstock	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Law Offices of Comstock & Bush	<input type="checkbox"/> Hand Delivered
199 N. Capitol Blvd., Ste. 500	<input type="checkbox"/> Overnight Mail
P.O. Box 2774	<input checked="" type="checkbox"/> Telecopy
Boise, Idaho 83701	
Fax No.: (208) 344-7721	

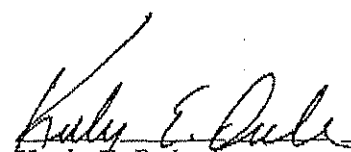
and I caused to be served a true and correct copy of DEFENDANT THOMAS BYRNE, P.A.'S

FOURTH SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS

FOR PRODUCTION OF DOCUMENTS, with a copy of this NOTICE OF SERVICE, by the

method indicated below and addressed to the following:

Steven J. Hippler	<input type="checkbox"/> U.S. Mail, Postage Prepaid
GIVENS PURSLEY	<input type="checkbox"/> Hand Delivered
601 W. Bannock ST.	<input type="checkbox"/> Overnight Mail
PO Box 2720	<input checked="" type="checkbox"/> Telecopy
Boise ID 83701-2720	


Keely E. Duke



Convey

HALL, FARLEY, OBERRECHT & BLANTON, P.A.

702 WEST IDAHO STREET, SUITE 700
KEY FINANCIAL CENTER
BOISE, IDAHO 83702

POST OFFICE BOX 1271
BOISE, IDAHO 83701

TELEPHONE (208) 395-8500
FACSIMILE (208) 395-8585
WAVE-404.53 Foster 19.doc

E-MAIL: contact@hallfarley.com
WEB PAGE: www.hallfarley.com

RICHARD E. HALL	KIRBY E. DUKE
DONALD J. FARLEY	JAMES S. THOMSON, II
PHILIP S. OBERRECHT	BRYAN A. NICKELS
I. CHARLES BLANTON	CHRIS D. COMSTOCK
RAYMOND D. POWERS	PORTIA L. JENKINS
CANDY WAGAHOFF DALE	KAREN O. SHEEHAN
J. KEVIN WEST	DANA M. HERBERHOLZ
BART W. HARWOOD	MARK J. ORLER
JOHN I. BURKE	JEFFREY R. TOWNSEND
KEVIN J. SCANLAN	ROBERT A. BEERY
TAMSEN L. LEACHMAN	MEGAN E. MOONEY

*With Attorneys Admitted to Practice Law in
Idaho, Oregon, Washington and Utah*

October 11, 2007

VIA FACSIMILE

Byron Foster
David Comstock
Law Offices of Comstock & Bush
199 N. Capitol Blvd., Ste. 500
P.O. Box 2774
Boise, Idaho 83701

Re: *Schmechel v. Byrne, et al.*,
HFOB File No.: 2-404.53

Dear Dave and Byron:

Enclosed is Defendants' Exhibit 276.

Very truly yours,

Kathy Savell, Paralegal

KAS/cp
Enclosure
cc: Steve Hippler (via fax w/encl.)

DELEGATION OF SERVICES AGREEMENT

DELEGATION OF SERVICES AGREEMENT

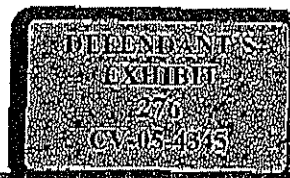
A Delegation of Services Agreement is to be maintained at each practice site and available to the Board upon request. The Delegation of Services (DOS) Agreement is a written document mutually agreed upon and signed and dated by the physician assistant and supervising physician that defines the working relationship and delegation of duties between the supervising physician and the physician assistant as specified by Board rule. The Board of Medicine may review the written Delegation of Services Agreement, job descriptions, policy statements, or other documents that define the responsibilities of the physician assistant in the practice setting, and may require such changes as needed to achieve compliance with these rules, and to safeguard the public.

The following information must be legible. Use additional sheets if necessary. DO NOT SUBMIT YOUR DELEGATION OF SERVICES AGREEMENTS TO THE BOARD WITH YOUR APPLICATION FOR LICENSURE.

Physician Assistant Name: Thomas Byrne
Supervising Physician Name: Clinton Dille
Alternate Supervising Physician(s) Name(s): _____

PRACTICE SITE(S):

1. Name of Facility: Southern Idaho Pain and Rehabilitation Institute
Address: 236 Madison St
Twin Falls, Idaho 83301
2. Name of Facility: Southern Idaho Pain and Rehabilitation Institute
Address: 496 E. Shoup Ave W.
Twin Falls, Idaho 83301



Delegation of Services Agreement

Each licensed physician assistant shall maintain a current copy of the Delegation of Services (DOS) Agreement between the physician assistant and each of his or her supervising physicians. This agreement shall not be sent to the Board, but must be maintained on file at each location in which the physician assistant is practicing. This agreement shall be made immediately available to the Board upon request and shall include:

Activity and Location

A listing of the specific activities, which will be performed by the physician assistant and the specific locations and facilities in which the physician assistant will function.

Location of Practice

Southern Idaho Pain and Rehabilitation 236 Martin St. Twin Falls, Idaho 83301	Southern Idaho Pain and Rehabilitation 496 E. Shoup Ave. West Twin Falls, ID 83301
---	--

Specific Duties - Activities**Initial Evaluation of Patients**

The physician assistant employed with Southern Idaho Pain & Rehabilitation will be utilized in the initial evaluation for patients seen in this facility. These patients stem from a physician referral base and also patient self-referrals. Patients will require a full history and physical on initial visit. Pertinent findings will be documented and recommendations made. The recommendations will be reviewed by the supervising physician to confirm findings and determine a treatment plan.

Re-Evaluation

The PA will be utilized in the re-evaluation of existing patients for medication management, prescription renewal and recommendations for further treatment within our facility. The PA will perform appropriate system exams based on the patient's chief complaint. Upon this exam, will recommend the type of therapy and/or procedure that is needed. The supervising physician will review and perform procedures as indicated.

Surgical Assistant

The physician assistant will assist the supervising physician with cases presented in our surgery center. These cases will include but are not limited to, epidural procedures under fluoroscopy, epidurograms, discograms, stellate ganglion blocks, lumbar sympathetic blocks and Medtronic intrathecal trials. The supervising physician will train the PA to assist him on all of the above procedures.

Minor Procedures

The PA will perform several small office based procedures based on the medical findings on clinical exam within this facility. These include, but are not limited to: trigger point injections, small joint injections, occipital injections, and laceration repair.

Therapy

The PA will assist in managing and evaluating patients for physical therapy within our facility.

General Guidelines

The Physician Assistants training, background and experience make him qualified to function in this capacity. His practice will be augmented by 24-hour backup and support from his designated primary and secondary supervising Physician.

Care Review

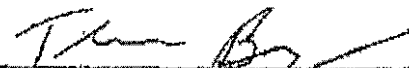
Periodic review of a representative sample of records and a periodic review of the medical services being provided by the physician assistant. This review shall also include an evaluation of adherence to the delegation of services agreement.

Please describe how this will be accomplished at this practice location:

As the primary supervising physician, I will perform periodic chart reviews and case evaluations of patients seen by the physician assistant. In addition, a secondary supervising physician or I will be available 24 hours a day to provide the physician assistant with medical guidance and supervision.

Signatures:

(Physician Assistant)



(Date)

4/15/03

(Supervising Physician)



(Date)

4/15/02

(Alternate Supervising Physician)

(Date)

LAW OFFICE
HALL, FARLEY, OBERRECHT & BLANTON, P.A.

702 W. Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701

Telephone: (208) 395-8500
Facsimile: (208) 395-8585

FACSIMILE COVER SHEET

October 11, 2007

TO: David E. Comstock FAX: (208) 344-7721
Byron Foster

Steven J. Hippler (208) 388-1300

FROM: Keely Duke

RE: Schmechel v. Byrne, et al.
HFOB File No.: 2-404.53

MESSAGE: Attached is Defendants' Exhibit 276. Thank you.

PAGES : including cover page: 6

HARD COPY TO FOLLOW: No.

Sent by: Cathy Pontak

Margie Rosenberg

From: Margie Rosenberg
Sent: Wednesday, October 10, 2007 3:29 PM
To: 'ked@hallfarley.com'
Cc: David Comstock; Byron Foster
Subject: Schmechel

Hi Keely,

Thank you for the 2003 Delegation of Services Agreement, produced today in response to Plaintiffs' First Request for Production of Documents, Request No. 9, propounded June 29, 2006. We would like to have an opportunity to examine the original document as soon as possible. Please contact us today to make those arrangements.

Thank you.

Margie Rosenberg

Richard E. Hall
ISB #1253; reh@hallfarley.com
Keely E. Duke
ISB #6044; ked@hallfarley.com
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
W:\2\2-404.53\RFP-Res-01.3RD.SUPP.doc

Attorneys for Defendant Thomas J. Byrne

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A. and
JOHN DOE, I through X,

Defendants.

Case No. CV-05-4345

**DEFENDANT THOMAS BYRNE,
P.A.'S FOURTH SUPPLEMENTAL
RESPONSES TO PLAINTIFFS'
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

COMES NOW defendant, Thomas Byrne, P.A., by and through his attorneys of record, Hall,
Farley, Oberrecht & Blanton, P.A., and hereby responds to Plaintiff's First Set of Requests for
DEFENDANT THOMAS BYRNE, P.A.'S FOURTH SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS - I

Production of Documents to Defendant Thomas Byrne, P.A., propounded on June 29, 2006, as follows:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 9: Produce copies of any and all delegation of services agreements pertaining to your employment by Southern Idaho Pain Institute and Dr. Clinton Dille.

RESPONSE: Documents responsive to this Request were produced at the deposition of Mr. Byrne on May 18, 2006.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Attached hereto as Exhibit A is a true and correct copy of the Delegation of Services Agreement dated April 15, 2003.

DATED this 10th day of October, 2007.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By Keely E. Duke
Keely E. Duke - Of the Firm
Attorneys for Defendant Thomas J. Byrne

CERTIFICATE OF SERVICE

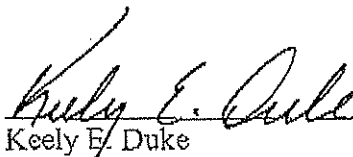
I HEREBY CERTIFY that on the 10th day of October, 2007, I caused to be served the original of the foregoing **DEFENDANT THOMAS BYRNE, P.A.'S FOURTH SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**, by the method indicated below, and addressed to each of the following:

David Comstock
Law Offices of Comstock & Bush
199 N. Capitol Blvd., Ste. 500
P.O. Box 2774
Boise, Idaho 83701
Attorney for Plaintiffs
Fax No.: (208) 344-7721

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

Steven J. Hippler
GIVENS PURSLEY
601 W. Bannock ST.
PO Box 2720
Boise ID 83701-2720
*Attorneys for Clinton Dille, M.D. and
Southern Idaho Pain Institute*

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy



Keely E. Duke

DELEGATION OF SERVICES AGREEMENT

DELEGATION OF SERVICES AGREEMENT

A Delegation of Services Agreement is to be maintained at each practice site and available to the Board upon request. The Delegation of Services (DOS) Agreement is a written document mutually agreed upon and signed and dated by the physician assistant and supervising physician that defines the working relationship and delegation of duties between the supervising physician and the physician assistant as specified by Board rule. The Board of Medicine may review the written Delegation of Services Agreement, job descriptions, policy statements, or other documents that define the responsibilities of the physician assistant in the practice setting, and may require such changes as needed to achieve compliance with these rules, and to safeguard the public.

The following information must be legible. Use additional sheets if necessary. DO NOT SUBMIT YOUR DELEGATION OF SERVICES AGREEMENTS TO THE BOARD WITH YOUR APPLICATION FOR LICENSURE.

Physician Assistant Name: Thomas Byrne
 Supervising Physician Name: Clinton Dille
 Alternate Supervising Physician(s) Name(s): _____

PRACTICE SITE(S):

1. Name of Facility: Southern Idaho Pain and Rehabilitation Institute
 Address: 236 Martin St
Twin Falls, Idaho 83301

2. Name of Facility: Southern Idaho Pain and Rehabilitation Institute
 Address: 496 E. Shoup Ave W.
Twin Falls, Idaho 83301

Delegation of Services Agreement.

Each licensed physician assistant shall maintain a current copy of the Delegation of Services (DOS) Agreement between the physician assistant and each of his or her supervising physicians. This agreement shall not be sent to the Board, but must be maintained on file at each location in which the physician assistant is practicing. This agreement shall be made immediately available to the Board upon request and shall include:

Activity and Location

A listing of the specific activities, which will be performed by the physician assistant and the specific locations and facilities in which the physician assistant will function.

Location of Practice

Southern Idaho Pain and Rehabilitation
236 Martin St.
Twin Falls, Idaho 83301

Southern Idaho Pain and Rehabilitation
496 E. Shoup Ave. West
Twin Falls, ID 83301

Specific Duties - Activities

Initial Evaluation of Patients

The physician assistant employed with Southern Idaho Pain & Rehabilitation will be utilized in the initial evaluation for patients seen in this facility. These patients stem from a physician referral base and also patient self-referrals. Patients will require a full history and physical on initial visit. Pertinent findings will be documented and recommendations made. The recommendations will be reviewed by the supervising physician to confirm findings and determine a treatment plan.

Re-Evaluation

The PA will be utilized in the re-evaluation of existing patients for medication management, prescription renewal and recommendations for further treatment within our facility. The PA will perform appropriate system exams based on the patient's chief complaint. Upon this exam, will recommend the type of therapy and/or procedure that is needed. The supervising physician will review and perform procedures as indicated.

Surgical Assistant

The physician assistant will assist the supervising physician with cases presented in our surgery center. These cases will include but are not limited to, epidural procedures under fluoroscopy, epidurograms, discograms, stellate ganglion blocks, lumbar sympathetic blocks and Medtronic intrathecal trials. The supervising physician will train the PA to assist him on all of the above procedures.

Minor Procedures

The PA will perform several small office based procedures based on the medical findings on clinical exam within this facility. These include, but are not limited to: trigger point injections, small joint injections, occipital injections, and laceration repair.

Therapy

The PA will assist in managing and evaluating patients for physical therapy within our facility.

General Guidelines

The Physician Assistants training, background and experience make him qualified to function in this capacity. His practice will be augmented by 24-hour backup and support from his designated primary and secondary supervising Physician.

Direction and Control

The methods to be used to insure responsible direction and control of the activities of the physician assistant which shall provide for an on-site visit at least monthly, regularly scheduled conferences between the supervising physician and the physician assistant, and availability of the supervising physician to the physician assistant in person or by telephone.

Please describe how this will be accomplished at this practice site:

As the physician assistant's supervising physician I will be available for consultation, guidance, and supervision on most business days, in my infrequent absences a secondary supervising physician will be available.

I will perform at least monthly periodic chart and case reviews, and will work with my physician assistant to establish and maintain mutually agreed upon practice protocols & guidelines.

Emergency Procedures

Availability of the supervising physician to the physician assistant in person or by telephone and procedures for providing backup for the physician assistant in emergency situations.

Please describe how this will be accomplished at this practice site.

When a seriously ill or injured patient present to Southern Idaho Pain and Rehabilitation the physician assistant will initiate stabilizing care and maintain strict adherence to ACLS, ATLS, and PALS guidelines. The physician assistant will move expeditiously to transfer the care of the patient to an appropriate physician or physician specialist. A primary or secondary physician will be available 24 hours per day to provide consultation, guidance and supervision to the physician assistant.

Addressing Situations Outside the Scope of Practice

Procedures for addressing situations outside the scope of practice of the physician assistant.

Please describe how this will be accomplished at this practice site.

Should a situation occur that is outside the scope of practice for the physician assistant he will immediately contact a primary or secondary supervising physician for consultation, guidance and instruction. The patient's care will be expediently transferred to an appropriate physician.

Prescription Authority

A physician assistant who wishes to apply for prescription writing authority shall submit an application for such purpose to the Board of Medicine.

The drug categories or specific legend drugs and controlled drugs, Schedule II through V that will be prescribed provided that the legend drugs and controlled drugs shall be consistent with the regular prescriptive practice of the supervising physician.

Current prescribing privileges, now include Schedule 2, 2N, 3, 3N, 4 and 5, after application and approval through the Idaho Board of Medicine and Federal Drug Enforcement Administration guidelines.

DEA # MB0480981

Issued 8/14/02

Expires 7/31/05

Care Review

Periodic review of a representative sample of records and a periodic review of the medical services being provided by the physician assistant. This review shall also include an evaluation of adherence to the delegation of services agreement.

Please describe how this will be accomplished at this practice location:

As the primary supervising physician, I will perform periodic chart reviews and case evaluations of patients seen by the physician assistant. In addition, a secondary supervising physician or I will be available 24 hours a day to provide the physician assistant with medical guidance and supervision.

Signatures:

(Physician Assistant)

Tim B

(Date)

4/15/03

(Supervising Physician)

C. Hallfarley

(Date)

4/15/07

(Alternate Supervising Physician)

(Date)

Richard E. Hall
ISB #1253; reh@hallfarley.com
Keely E. Duke
ISB #6044; ked@hallfarley.com
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
W:\22-404,53\NOS 14.DOC

Attorneys for Defendant Thomas J. Byrne

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A. and
JOHN DOE, I through X,

Defendants.

Case No. CV-05-4345

NOTICE OF SERVICE

NOTICE IS HEREBY GIVEN that on the 10th day of October, 2007, I caused to be
served the original of DEFENDANT THOMAS BYRNE, P.A.'S FOURTH SUPPLEMENTAL

RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, with a copy of this NOTICE OF SERVICE, by the method indicated below and addressed to the following:

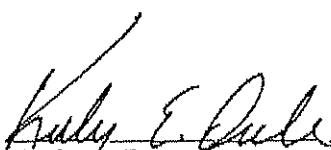
David Comstock
Law Offices of Comstock & Bush
199 N. Capitol Blvd., Ste. 500
P.O. Box 2774
Boise, Idaho 83701
Fax No.: (208) 344-7721

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

and I caused to be served a true and correct copy of DEFENDANT THOMAS BYRNE, P.A.'S FOURTH SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, with a copy of this NOTICE OF SERVICE, by the method indicated below and addressed to the following:

Steven J. Hippler
GIVENS PURSLEY
601 W. Bannock ST.
PO Box 2720
Boise ID 83701-2720

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy


Keely E. Duke

Byron V. Foster
Attorney at Law

199 N. Capitol Blvd., Suite 500
PO Box 1584
Boise, ID 83701-1584

Telephone: (208) 336-4440
Facsimile: (208) 344-7721

October 10, 2007

VIA FACSIMILE

Keely E. Duke
HALL FARLEY OBERRECHT & BLANTON, PA
702 West Idaho, Suite 700
PO Box 1271
Boise ID 83701

VIA FACSIMILE

Steven J. Hippler
GIVENS PURSLEY, LLP
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

RE: *Schmechel v. Dille, M.D, et al.*

Dear Counsel:

I am attaching Plaintiffs' Exhibit 40, the Delegation of Services Agreement produced by Defendant Byrne today. Please exchange it for the Exhibit 40 that was provided to you on Monday, October 8, 2007.

Yours very truly,

*Dictated and sent without
signature to avoid delay*

Byron V. Foster

BVF/sf
Attachment

hp LaserJet 4345mfp series



Fax Call Report

1

COMSTOCK & BUSH
208-344-7721
Oct-10-2007 15:32

Job	Date/Time	Type	Identification	Duration	Pages	Result
9726	Oct-10-2007 15:29	Send	3958585	2:11	6	Success

hp LaserJet 4345mfp series



Fax Call Report

1

COMSTOCK & BUSH
208-344-7721
Oct-10-2007 15:35

Job	Date/Time	Type	Identification	Duration	Pages	Result
9727	Oct-10-2007 15:32	Send	3881300	3:00	6	Success

DELEGATION OF SERVICES AGREEMENT

DELEGATION OF SERVICES AGREEMENT

A Delegation of Services Agreement is to be maintained at each practice site and available to the Board upon request. The Delegation of Services (DOS) Agreement is a written document mutually agreed upon and signed and dated by the physician assistant and supervising physician that defines the working relationship and delegation of duties between the supervising physician and the physician assistant as specified by Board rule. The Board of Medicine may review the written Delegation of Services Agreement, job descriptions, policy statements, or other documents that define the responsibilities of the physician assistant in the practice setting, and may require such changes as needed to achieve compliance with these rules, and to safeguard the public.

The following information must be legible. Use additional sheets if necessary. DO NOT SUBMIT YOUR DELEGATION OF SERVICES AGREEMENTS TO THE BOARD WITH YOUR APPLICATION FOR LICENSURE.

Physician Assistant Name: Thomas Byrne

Supervising Physician Name: Clinton Dille

Alternate Supervising Physician(s) Name(s): _____

PRACTICE SITE(S):

1. Name of Facility: Southern Idaho Pain and Rehabilitation Inst + Hc.
Address: 236 merwin St
Twin Falls, Idaho 83301.

2. Name of Facility: Southern Idaho Pain and Rehabilitation Inst + Hc.
Address: 496 E. Shoup Ave W.
Twin Falls, Idaho 83301.



Delegation of Services Agreement.

Each licensed physician assistant shall maintain a current copy of the Delegation of Services (DOS) Agreement between the physician assistant and each of his or her supervising physicians. This agreement shall not be sent to the Board, but must be maintained on file at each location in which the physician assistant is practicing. This agreement shall be made immediately available to the Board upon request and shall include:

Activity and Location

A listing of the specific activities, which will be performed by the physician assistant and the specific locations and facilities in which the physician assistant will function.

Location of Practice

Southern Idaho Pain and Rehabilitation
236 Martin St.
Twin Falls, Idaho 83301

Southern Idaho Pain and Rehabilitation
496 E. Skoup Ave. West
Twin Falls, ID 83301

Specific Duties - Activities

Initial Evaluation of Patients

The physician assistant employed with Southern Idaho Pain & Rehabilitation will be utilized in the initial evaluation for patients seen in this facility. These patients stem from a physician referral base and also patient self-referrals. Patients will require a full history and physical on initial visit. Pertinent findings will be documented and recommendations made. The recommendations will be reviewed by the supervising physician to confirm findings and determine a treatment plan.

Re-Evaluation

The PA will be utilized in the re-evaluation of existing patients for medication management, prescription renewal and recommendations for further treatment within our facility. The PA will perform appropriate system exams based on the patient's chief complaint. Upon this exam, will recommend the type of therapy and/or procedure that is needed. The supervising physician will review and perform procedures as indicated.

Surgical Assistant

The physician assistant will assist the supervising physician with cases presented in our surgery center. These cases will include but are not limited to, epidural procedures under fluoroscopy, epidurograms, discograms, stellate ganglion blocks, lumbar sympathetic blocks and Medtronic Intrathecal trials. The supervising physician will train the PA to assist him on all of the above procedures.

Minor Procedures

The PA will perform several small office based procedures based on the medical findings on clinical exam within this facility. These include, but are not limited to: trigger point injections, small joint injections, occipital injections, and laceration repair.

Therapy

The PA will assist in managing and evaluating patients for physical therapy within our facility.

General Guidelines

The Physician Assistant's training, background and experience make him qualified to function in this capacity. His practice will be augmented by 24-hour backup and support from his designated primary and secondary supervising Physician.

Direction and Control

The methods to be used to insure responsible direction and control of the activities of the physician assistant which shall provide for an on-site visit at least monthly, regularly scheduled conferences between the supervising physician and the physician assistant, and availability of the supervising physician to the physician assistant in person or by telephone.

Please describe how this will be accomplished at this practice site:

As the physician assistant's supervising physician I will be available for consultation, guidance, and supervision on most business days, in my infrequent absences a secondary supervising physician will be available.

I will perform at least monthly periodic chart and case reviews, and will work with my physician assistant to establish and maintain mutually agreed upon practice protocols & guidelines.

Emergency Procedures

Availability of the supervising physician to the physician assistant in person or by telephone and procedures for providing backup for the physician assistant in emergency situations.

Please describe how this will be accomplished at this practice site.

When a seriously ill or injured patient present to Southern Idaho Pain and Rehabilitation the physician assistant will initiate stabilizing care and maintain strict adherence to ACLS, ATLS, and PALS guidelines. The physician assistant will move expeditiously to transfer the care of the patient to an appropriate physician or physician specialist. A primary or secondary physician will be available 24 hours per day to provide consultation, guidance and supervision to the physician assistant.

Addressing Situations Outside the Scope of Practice

Procedures for addressing situations outside the scope of practice of the physician assistant.

Please describe how this will be accomplished at this practice site.

Should a situation occur that is outside the scope of practice for the physician assistant he will immediately contact a primary or secondary supervising physician for consultation, guidance and instruction. The patient's care will be expediently transferred to an appropriate physician.

Prescription Authority

A physician assistant who wishes to apply for prescription writing authority shall submit an application for such purpose to the Board of Medicine.

The drug categories or specific legend drugs and controlled drugs, Schedule II through V that will be prescribed provided that the legend drugs and controlled drugs shall be consistent with the regular prescriptive practice of the supervising physician.

Current prescribing privileges, now include Schedule 2, 2N, 3, 3N, 4 and 5, after application and approval through the Idaho Board of Medicine and Federal Drug Enforcement Administration guidelines.

DEA # MB0480981

Issued 8/14/02

Expires 7/31/05

Care Review

Periodic review of a representative sample of records and a periodic review of the medical services being provided by the physician assistant. This review shall also include an evaluation of adherence to the delegation of services agreement.

Please describe how this will be accomplished at this practice location:

As the primary supervising physician, I will perform periodic chart reviews and case evaluations of patients seen by the physician assistant. In addition, a secondary supervising physician or I will be available 24 hours a day to provide the physician assistant with medical guidance and supervision.

Signatures:

(Physician Assistant) T. M. B. (Date) 4/15/03
(Supervising Physician) C. M. B. (Date) 4/15/03
(Alternate Supervising Physician) _____ (Date) _____

Byron V. Foster
Attorney at Law

199 N. Capitol Blvd., Suite 500
PO Box 1584
Boise, ID 83701-1584

Telephone: (208) 336-4440
Facsimile: (208) 344-7721

FACSIMILE COVER SHEET

TO: Keely Duke
395-8585

Steven J. Hippler
388-1300

FROM: Byron V. Foster

DATE: October 10, 2007

RE: *Schmechel v. Dille, et al.*

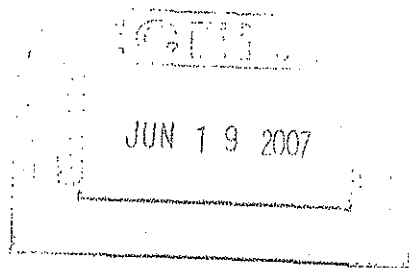
COMMENTS: Please see the attached correspondence.

Including this cover sheet, this facsimile contains 6 page(s).

CONFIDENTIALITY NOTICE

The information in this facsimile is confidential and intended only for the use of the addressee. The data transmitted is attorney privileged and may be exempt from disclosure. Do not copy or distribute to anyone other than the addressee. Reliance on this data by other than the intended recipient is prohibited. Please notify us immediately if you have received this communication in error. Upon notification we will arrange for return of the fax copies to Comstock & Bush. Additionally, if you do not receive all of the pages of this facsimile, please notify our office as soon as possible. Thank you for your cooperation. If you have any problems receiving this fax, please contact the operator at (208) 336-4440.

Richard E. Hall
ISB #1253; reh@hallfarley.com
Keely E. Duke
ISB #6044; ked@hallfarley.com
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
W:\2\2-404.53\BYRNE EXPERT DISCLOSURE.DOC



Attorneys for Defendant Thomas J. Byrne

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

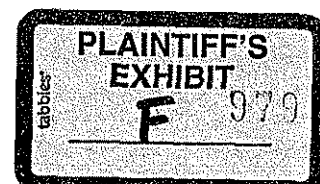
vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A. and
JOHN DOE, I through X,

Defendants.

Case No. CV-05-4345

**DEFENDANT THOMAS J. BYRNE'S
DISCLOSURE OF EXPERT
WITNESSES**



COMES NOW defendant Thomas J. Byrne, P.A., by and through his counsel of record Hall, Farley, Oberrecht & Blanton, P.A., and hereby discloses the following expert witnesses whom he may call at the trial of this matter:

1. Chris J. Kottenstette, PA-C
8405 E. Hampden Ave., Apt. 23-C
Denver, CO 80231
(970) 215-0903

Mr. Kottenstette is a physician assistant practicing pain medicine in Denver, Colorado. Mr. Kottenstette has been formally retained by counsel for defendant Thomas J. Byrne. Mr. Kottenstette's Curriculum Vitae is attached hereto as Exhibit A. Mr. Kottenstette charges for his work as an expert are as follows: \$150/hour to review records, \$200/hour for depositions in Denver, Colorado, and \$1,500/day for testimony outside of Denver, Colorado. It is unknown at this time what cases, if any, Mr. Kottenstette has provided deposition or trial testimony within the preceding four years, and, if available, such information will be provided at a later date.

Subject Matter:

Applicable medical principals, liability, causation, and damages

Substance of Facts:

A list of case materials Mr. Kottenstette reviewed is attached hereto as Exhibit B. In addition to the case specific items Mr. Kottenstette may use in his review of this case and the opinions he renders in this case, he will be provided the depositions of plaintiffs' experts and plaintiffs' treating physicians once those deposition have been taken. He may also rely on relevant medical research and/or literature related to any of the subject matters addressed in plaintiffs' experts' disclosure, this expert disclosure, or depositions taken in this case. He will also be provided all documents plaintiffs' expert have reviewed and are relying on (however, plaintiffs have not yet provided all of those documents to Mr. Byrne's counsel).

Substance of Opinions:

It is expected Mr. Kottenstette will testify regarding issues within his expertise, and will testify that all opinions he expresses are held with reasonable medical certainty. It is anticipated Mr. Kottenstette will testify that Mr. Byrne met the standard of care applicable to a physician assistant practicing pain management medicine in September and October 2003 in Twin Falls, Idaho in all aspects of his care and treatment of Mrs. Schmechel.

Mr. Kottenstette will testify that he is familiar with the applicable standard of care based on his years of practice as a physician assistant in pain management medicine, along with his review of the care provided to Mrs. Schmechel by the Southern Idaho Pain Institute and the depositions of Mr. Byrne and Dr. Dille, which include their explanation of what the applicable standard of care was for their respective specialties and positions in September and October of 2003 in Twin Falls, Idaho. It is further anticipated Mr. Kottenstette will testify that based on his review of those items, it is his opinion that the applicable standard of care for Mr. Byrne, as Mr. Byrne and Dr. Dille practiced it and explained it, is consistent with the standard of care as Mr. Kottenstette understood it to be for such similar providers as was applicable in out-patient pain management clinics in Denver, Colorado in 2003 and, therefore, he has actual knowledge regarding such standard of care. In addition, it is also anticipated Mr. Kottenstette will testify that he has reviewed the affidavits of Dr. Rodde Cox, Dr. William Binegar, and Dr. Bradford Hare and, based on those affidavits believes he is adequately familiar with the applicable standard of care and that such standard was no different in September and October 2003 in Twin Falls, Idaho than in Denver, Colorado. It is also anticipated that Mr. Kottenstette will testify that he also reviewed the affidavits of Arthur Lipman, Pharm-D, as well as the disclosures of the plaintiffs' expert witnesses who profess to have knowledge of the standard of care applicable to Mr. Byrne and Dr. Dille. It is anticipated Mr. Kottenstette will testify that based

on his reading of those affidavits (and Dr. Hare's affidavit) and his personal knowledge of a physician assistant's practice in Salt Lake City, Utah which he learned during his enrollment in the University of Utah Physician Assistant program, that the applicable standard of care is no different between Salt Lake City, Utah and Denver, Colorado.

It is anticipated Mr. Kottenstette will testify that Mr. Byrne met the standard of care in all aspects of his care and treatment of Mrs. Schmechel. Specifically, it is anticipated Mr. Kottenstette will testify that based upon his review of the records and deposition transcripts, it is apparent to him that Mr. Byrne was an appropriately trained and experienced physician assistant and had an appropriate understanding for a physician assistant of the use and prescription of Methadone. As such, it is anticipated Mr. Kottenstette will testify that he disagrees with Dr. Lipman's assertion that Mr. Byrne appeared to lack the appropriate level of understanding of the pharmacologic properties of Methadone; rather, it is anticipated Mr. Kottenstette will testify Mr. Byrne had an appropriate understanding of the pharmacology of Methadone and prescribed it appropriately..

It is also anticipated Mr. Kottenstette will testify that Mr. Byrne complied with the standard of care in obtaining an appropriately thorough history regarding Mrs. Schmechel. In providing this opinion, it is anticipated Mr. Kottenstette will testify that Mr. Byrne performed an adequate and thorough examination of Mrs. Schmechel that included a physical examination, review of her past medical conditions (including her history of obstructive sleep apnea), past medical treatment (including her use of C-pap), current condition, current and past medications, her reasons for going to the Southern Idaho Pain Institute, and her goals for treatment. It is also anticipated he will testify that Mr. Byrne verified that Mrs. Schmechel had an objective basis for pain for which she complained by obtaining her latest MRI, which showed arachnoiditis which would account for such neuropathic pain, and by obtaining her latest orthopedic surgery consult which indicated that there

was no surgical intervention in terms of spinal surgery available to her. In providing these opinions, it is also anticipated Mr. Kottenstette will testify that the standard of care allows a provider to use his discretion and judgment as to when and what records are necessary to obtain. It is further anticipated Mr. Kottenstette will testify that the standard of care did not require that Mr. Byrne obtain Mrs. Schmechel's prior treatment records from any provider (or discuss Mrs. Schmechel with any of her prior providers) because he determined Mrs. Schmechel was a competent historian and he determined that he obtained the necessary information from her from which he was able to formulate an appropriate treatment plan. It is anticipated Mr. Kottenstette will further testify, as addressed above, that it was appropriate for Mr. Byrne to obtain the orthopedic surgeon's records so he could evaluate whether the surgeon felt there was an operative component to Mrs. Schmechel's pain, which records indicated no surgical treatment option available. It is anticipated he will further testify that the standard of care did not require Mr. Byrne to contact Dr. Vorse, or obtain her records prior to initiating treatment and that based on his review of Dr. Vorse's records there is nothing in those records which would have suggested that Mr. Byrne not proceed with the treatment he implemented.

It is further anticipated Mr. Kottenstette will testify that Mr. Byrne complied with the applicable standard of care in 2003 when he elected to discontinue Mrs. Schmechel's Oxycontin and utilize Methadone as a long-acting opioid, to continue her use of Hydrocodone as a break-through pain medication, and also appropriately reduced the Amitriptyline dose she was taking, which was a conservative and reasonable approach to Mrs. Schmechel's treatment. It is anticipated that Mr. Kottenstette will further testify that the change to Methadone was within the standard of care because it is a widely used and accepted medication for the treatment of chronic pain, was a good choice for Mrs. Schmechel given that she complained her pain was not well-controlled on her prior pain regimen, it was thought that Methadone had a good effect for neuropathic pain such as Mrs.

Schmechel's, and because it is often times appropriate to change a patient's pain medication from one opioid to another (opioid rotations) as such change can provide better pain relief.

It is further anticipated Mr. Kottenstette will testify that Mr. Byrne's dosing of Methadone was also appropriate and in fact, conservative. It is anticipated that Mr. Kottenstette will testify that even had Mr. Byrne elected to start Mrs. Schmechel on 15 mg of Methadone twice a day, this would have been a reasonable and appropriate starting dose for her and that such dose would have complied with the standard of care. However, it is anticipated Mr. Kottenstette will testify that Mr. Byrne was more conservative by starting her on lower doses and titrating up to the reasonable starting dose of 30 mg a day.

It is also anticipated Mr. Kottenstette will testify that Mr. Byrne's initial prescription for 90 Methadone and 70 Hydrocodone met the standard of care. Specifically, it is anticipated Mr. Kottenstette will testify that writing a month long supply of such prescriptions is within the standard of care given her history (including her use of Hydrocodone and OxyContin), her condition (including the need to switch from one long-term pain management regimen to another), the information she was provided as to how much of both Methadone and Hydrocodone to take, and the anticipation her long-term pain management therapy would continue. As it is anticipated Mr. Kottenstette will testify, it was anticipated Mrs. Schmechel would be on the medications for the long-term given her history of chronic pain and that her orthopedic surgeon concluded there was not a surgical component to her pain. In addition, it is anticipated that Mr. Kottenstette will testify the record does not indicate Mrs. Schmechel was failing to follow Mr. Byrne's advice regarding her Methadone treatment and, rather, the records affirmatively establishes she was following Mr. Byrne's directions regarding her newly initiated therapy.

It is further anticipated Mr. Kottenstette will testify that Mr. Byrne complied with and exceeded the standard of care in all aspects of his follow-up care with Mrs. Schmechel. Specifically, it is anticipated he will testify that Mr. Byrne called Mrs. Schmechel on the Monday following his Friday visit and initiation of therapy with Mrs. Schmechel and that such call was appropriate. It is anticipated he will further testify that Mr. Byrne's direction to Mrs. Schmechel to call him the next day, and the fact she called him the next day, was excellent follow up by Mr. Byrne. In providing these opinions, it is also anticipated Mr. Kottenstette will testify that Mr. Byrne would have met the standard of care had he followed up with her one week after initiating her therapy (so, the following Friday). It is anticipated Mr. Kottenstette will also testify that the applicable standard of care does not require that Mr. Byrne follow-up with Ms. Schmechel every day, as Mr. Keller will allegedly testify. It is anticipated Mr. Kottenstette will explain that Mr. Keller's position regarding the follow-up care related to the initiation of Methadone is not consistent with the training Mr. Kottenstette received at the University of Utah, his practice as a physician assistant in Denver, Colorado, or with any standard of care of which Mr. Kottenstette is aware as each relates to a patient with Mrs. Schmechel's pain management history and medical condition. It is further anticipated that Mr. Kottenstette will testify that Mrs. Schmechel knew how to reach the Southern Idaho Pain Institute if she felt she needed to and that there is nothing in the medical records which suggests that she was having any problems with her new pain management therapy.

It is anticipated Mr. Kottenstette will also testify, to the extent admissible, that there is a factual dispute regarding whether Mrs. Schmechel talked with Mr. Byrne over the weekend to allegedly discuss some problems (edema and pain in her legs) her family alleges she was having. It is further anticipated Mr. Kottenstette will testify that even had those concerns been brought to Mr. Byrne's attention, that such concerns were likely not related to Methadone use but more probably

than not related to her history of edema in her legs due to other conditions. It is further anticipated Mr. Kottenstette will testify that the medical records strongly support the position that Mrs. Schmechel made no such calls to Mr. Byrne or the Southern Idaho Pain Clinic.

It is further anticipated that Mr. Kottenstette will testify that Mr. Byrne's titration of Mrs. Schmechel's Methadone dosage on Monday September 29 and Tuesday September 30, 2003 was appropriate based upon the original conservative dose, Mr. Byrne's follow up with Mrs. Schmechel on the following Monday and Tuesday, and what Mrs. Schmechel communicated to him during those two follow-up conversations. It is further anticipated he will testify that Mr. Byrne's verbal and written dosing instructions were clear and that Mrs. Schmechel was following those instructions. Specifically, it is anticipated Mr. Kottenstette will testify that if Mrs. Schmechel had not been following Mr. Byrne's instructions regarding her dosing, it is reasonable to expect that she would have notified Mr. Byrne on Monday, once he asked her to increase her dose from 5 mg twice a day to 10 mg twice a day, that she was already taking the higher dose. Mr. Kottenstette is also anticipated to testify that his opinions are further supported by the medical records which indicated that on Tuesday Mrs. Schmechel reported to Mr. Byrne that she was doing well and had increased her dose the Monday evening before to 15 mg. It is anticipated that Mr. Kottenstette will testify that as such, the records do not reflect that Mrs. Schmechel was not complying with Mr. Byrne's treatment plan; rather, they establish that she was in fact following his advice with respect to increasing her dose from 5mgs to 10mgs to 10-15mgs twice a day as he instructed her on September 26, 2003. It is anticipated Mr. Kottenstette will testify that in the event Mrs. Schmechel was not following Mr. Byrne's instructions and failed to inform him of her failure to follow his directions, Mr. Byrne is certainly not responsible for her actions or inaction and that she did not give him any indication that she was not following his treatment plan that he had explained to her.

It is further anticipated Mr. Kottenstette will testify that obstructive sleep apnea is a very common problem and in September and October of 2003 there was no information generally available to pain management physicians and physician assistants that there was any special concern or problem with Methadone in patients with obstructive sleep apnea that was any different than any other narcotic including those that Mrs. Schmechel had been on for a long period of time prior to seeing Mr. Byrne. It is further anticipated Mr. Kottenstette will testify that the standard of care did not require Mr. Byrne to inquire further regarding the exact degree of obstructive sleep apnea or examine her sleep study testing. It is anticipated Mr. Kottenstette will further testify that the fact that for years Mrs. Schmechel had been on higher equivalent doses of Oxycontin than the dose of Methadone that Mr. Byrne put her on (even assuming a starting dose of 30 mg) indicates that Mr. Byrne appropriately complied with the standard of care in how he treated Mrs. Schmechel and the extent to which he considered her sleep apnea, i.e., that it was being treated by C-pap, as there was nothing that would have made Mr. Byrne believe that Methadone posed any greater risk with respect to the sleep apnea to Mrs. Schmechel.

It is also anticipated Mr. Kottenstette will testify that the cause of Mrs. Schmechel's death is uncertain and that another condition she had was just as, if not more, likely to have caused her death than the Methadone and Hydrocodone. In providing this opinion, it is anticipated Mr. Kottenstette will rely on the descriptions provided regarding the scene of death and his knowledge of Mrs. Schmechel's various co-morbid medical conditions and personal habits.

It is further anticipated Mr. Kottenstette will testify that the case specific documents he has reviewed, along with the depositions of Mr. Byrne and Dr. Dille, establish a thorough, careful, and compassionate job performed by Mr. Byrne.

It is anticipated Mr. Kottenstette will be deposed in this matter and may testify regarding any issue addressed during the course of his deposition.

Mr. Kottenstette is expected to respond to and/or rebut opinions provided by medical expert witnesses called by plaintiffs, including, but not limited to, Mr. James Keller, Arthur Lipman, Pharm-D, Stephen Lordon, M.D., and Kimberly Vorse, M.D.

It is anticipated Mr. Kottenstette will address, explain and render expert opinions with regard to relevant medical subjects within his expertise, including, but not limited to, Class II narcotics (including OxyContin and Methadone), Hydrocodone, Amitriptyline, sleep apnea (including obstructive sleep apnea), opioid use (including long-term use), and any clinical findings and laboratory evaluations performed on Mrs. Schmechel.

2. Rodde Cox, M.D.
1000 N. Curtis, Suite 202
Boise, Idaho 83706
(209) 377-3435

Dr. Cox is a physician practicing in Boise, Idaho who practices Physical Medicine and Rehabilitation with an active part of his practice in pain management. Dr. Cox has been formally retained by counsel for defendant Thomas J. Byrne. Dr. Cox's Curriculum Vitae is attached hereto as Exhibit C. Dr. Cox charges \$300/hour for record review and \$500/hour for testimony. It is unknown at this time what cases, if any, Dr. Cox has provided deposition or trial testimony within the preceding four years, and, if available, such information will be provided at a later date.

Subject Matter:

Applicable medical principals, liability, causation, and damages

Substance of Facts:

A list of case materials Dr. Cox reviewed is attached hereto as Exhibit D. In addition to the case specific items Dr. Cox may use in his review of this case and the opinions he renders in this

case, he will be provided the depositions of plaintiffs' experts and plaintiffs' treating physicians once those deposition have been taken. He may also rely on relevant medical research and/or literature related to any of the subject matters addressed in plaintiffs' experts' disclosure, this expert disclosure, or depositions taken in this case. He will also be provided all documents plaintiffs' expert have reviewed and are relying on (however, plaintiffs have not yet provided all of those documents to Mr. Byrne's counsel).

Substance of Opinions:

It is expected Dr. Cox will testify as to all opinions and items contained within the Affidavit of Rodde Cox, M.D. dated June 11, 2007, which is attached as Exhibit E. It is further anticipated he will testify that all opinions he expresses are held with reasonable medical certainty. It is anticipated Dr. Cox will testify that Mr. Byrne met the standard of care applicable to a physician assistant practicing pain management medicine in September and October 2003 in Twin Falls, Idaho in all aspects of his care and treatment of Mrs. Schmechel.

It is anticipated Dr. Cox will testify that Mr. Byrne met the standard of care in all aspects of his care and treatment of Mrs. Schmechel. Specifically, it is anticipated Dr. Cox will testify that based upon his review of the records and deposition transcripts, it is apparent to him that Mr. Byrne was an appropriately trained and experienced physician assistant and had an appropriate understanding for a physician assistant of the use and prescription of Methadone. As such, it is anticipated Dr. Cox will testify that he disagrees with Dr. Lipman's assertion that Mr. Byrne appeared to lack the appropriate level of understanding of the pharmacologic properties of Methadone; rather, it is anticipated Dr. Cox will testify Mr. Byrne had an appropriate understanding of the pharmacology of Methadone and prescribed it appropriately..

It is also anticipated Dr. Cox will testify that Mr. Byrne complied with the standard of care in obtaining an appropriately thorough history regarding Mrs. Schmechel. In providing this opinion, it is anticipated Dr. Cox will testify that Mr. Byrne performed an adequate and thorough examination of Mrs. Schmechel that included a physical examination, review of her past medical conditions (including her history of obstructive sleep apnea), past medical treatment (including her use of C-pap), current condition, current and past medications, her reasons for going to the Southern Idaho Pain Institute, and her goals for treatment. It is also anticipated he will testify that Mr. Byrne verified that Mrs. Schmechel had an objective basis for pain for which she complained by obtaining her latest MRI, which showed arachnoiditis which would account for such neuropathic pain, and by obtaining her latest orthopedic surgery consult which indicated that there was no surgical intervention in terms of spinal surgery available to her. In providing these opinions, it is also anticipated Dr. Cox will testify that the standard of care allows a provider to use his discretion and judgment as to when and what records are necessary to obtain. It is further anticipated Dr. Cox will testify that the standard of care did not require that Mr. Byrne obtain Mrs. Schmechel's prior treatment records from any provider (or discuss Mrs. Schmechel with any of her prior providers) because he determined Mrs. Schmechel was a competent historian and he determined that he obtained the necessary information from her from which he was able to formulate an appropriate treatment plan. It is anticipated Dr. Cox will further testify, as addressed above, that it was appropriate for Mr. Byrne to obtain the orthopedic surgeon's records so he could evaluate whether the surgeon felt there was an operative component to Mrs. Schmechel's pain, which records indicated no surgical treatment option available. It is anticipated he will further testify that the standard of care did not require Mr. Byrne to contact Dr. Vorse, or obtain her records prior to initiating treatment and that based on his review of Dr.

Vorse's records there is nothing in those records which would have suggested that Mr. Byrne not proceed with the treatment he implemented.

It is further anticipated Dr. Cox will testify that Mr. Byrne complied with the applicable standard of care in 2003 when he elected to discontinue Mrs. Schmechel's Oxycontin and utilize Methadone as a long-acting opioid, to continue her use of Hydrocodone as a break-through pain medication, and also appropriately reduced the Amitriptyline dose she was taking, which was a conservative and reasonable approach to Mrs. Schmechel's treatment. It is anticipated that Dr. Cox will further testify that the change to Methadone was within the standard of care because it is a widely used and accepted medication for the treatment of chronic pain, was a good choice for Mrs. Schmechel given that she complained her pain was not well-controlled on her prior pain regimen, it was thought that Methadone had a good effect for neuropathic pain such as Mrs. Schmechel's, and because it is often times appropriate to change a patient's pain medication from one opioid to another (opioid rotations) as such change can provide better pain relief.

It is further anticipated Dr. Cox will testify that Mr. Byrne's dosing of Methadone was also appropriate and in fact, conservative. It is anticipated that Dr. Cox will testify that even had Mr. Byrne elected to start Mrs. Schmechel on 15 mg of Methadone twice a day, this would have been a reasonable and appropriate starting dose for her and that such dose would have complied with the standard of care. However, it is anticipated Dr. Cox will testify that Mr. Byrne was more conservative by starting her on lower doses and titrating up to the reasonable starting dose of 30 mg a day.

It is also anticipated Dr. Cox will testify that Mr. Byrne's initial prescription for 90 Methadone and 70 Hydrocodone met the standard of care. Specifically, it is anticipated Dr. Cox will testify that writing a month long supply of such prescriptions is within the standard of care given her

history (including her use of Hydrocodone and OxyContin), her condition (including the need to switch from one long-term pain management regimen to another), the information she was provided as to how much of both Methadone and Hydrocodone to take, and the anticipation her long-term pain management therapy would continue. As it is anticipated Dr. Cox will testify, it was anticipated Mrs. Schmechel would be on the medications for the long-term given her history of chronic pain and that her orthopedic surgeon concluded there was not a surgical component to her pain. In addition, it is anticipated that Dr. Cox will testify the record does not indicate Mrs. Schmechel was failing to follow Mr. Byrne's advice regarding her Methadone treatment and, rather, the records affirmatively establishes she was following Mr. Byrne's directions regarding her newly initiated therapy.

It is further anticipated Dr. Cox will testify that Mr. Byrne complied with and exceeded the standard of care in all aspects of his follow-up care with Mrs. Schmechel. Specifically, it is anticipated he will testify that Mr. Byrne called Mrs. Schmechel on the Monday following his Friday visit and initiation of therapy with Mrs. Schmechel and that such call was appropriate. It is anticipated he will further testify that Mr. Byrne's direction to Mrs. Schmechel to call him the next day, and the fact she called him the next day, was excellent follow up by Mr. Byrne. In providing these opinions, it is also anticipated Dr. Cox will testify that Mr. Byrne would have met the standard of care had he followed up with her one week after initiating her therapy (so, the following Friday). It is anticipated Dr. Cox will also testify that the applicable standard of care does not require that Mr. Byrne follow-up with Ms. Schmechel every day, as Mr. Keller will allegedly testify. It is anticipated Dr. Cox will explain that Mr. Keller's position regarding the follow-up care related to the initiation of Methadone is not consistent with the training Dr. Cox received at the University of Utah, his practice as a physician assistant in Denver, Colorado, or with any standard of care of which Dr. Cox is aware as each relates to a patient with Mrs. Schmechel's pain management history and medical

condition. It is further anticipated that Dr. Cox will testify that Mrs. Schmechel knew how to reach the Southern Idaho Pain Institute if she felt she needed to and that there is nothing in the medical records which suggests that she was having any problems with her new pain management therapy.

It is anticipated Dr. Cox will also testify, to the extent admissible, that there is a factual dispute regarding whether Mrs. Schmechel talked with Mr. Byrne over the weekend to allegedly discuss some problems (edema and pain in her legs) her family alleges she was having. It is further anticipated Dr. Cox will testify that even had those concerns been brought to Mr. Byrne's attention, that such concerns were likely not related to Methadone use but more probably than not related to her history of edema in her legs due to other conditions. It is further anticipated Dr. Cox will testify that the medical records strongly support the position that Mrs. Schmechel made no such calls to Mr. Byrne or the Southern Idaho Pain Clinic.

It is further anticipated that Dr. Cox will testify that Mr. Byrne's titration of Mrs. Schmechel's Methadone dosage on Monday September 29 and Tuesday September 30, 2003 was appropriate based upon the original conservative dose, Mr. Byrne's follow up with Mrs. Schmechel on the following Monday and Tuesday, and what Mrs. Schmechel communicated to him during those two follow-up conversations. It is further anticipated he will testify that Mr. Byrne's verbal and written dosing instructions were clear and that Mrs. Schmechel was following those instructions. Specifically, it is anticipated Dr. Cox will testify that if Mrs. Schmechel had not been following Mr. Byrne's instructions regarding her dosing, it is reasonable to expect that she would have notified Mr. Byrne on Monday, once he asked her to increase her dose from 5 mg twice a day to 10 mg twice a day, that she was already taking the higher dose. Dr. Cox is also anticipated to testify that his opinions are further supported by the medical records which indicated that on Tuesday Mrs. Schmechel reported to Mr. Byrne that she was doing well and had increased her dose the Monday

evening before to 15 mg. It is anticipated that Dr. Cox will testify that as such, the records do not reflect that Mrs. Schmechel was not complying with Mr. Byrne's treatment plan; rather, they establish that she was in fact following his advice with respect to increasing her dose from 5mgs to 10mgs to 10-15mgs twice a day as he instructed her on September 26, 2003. It is anticipated Dr. Cox will testify that in the event Mrs. Schmechel was not following Mr. Byrne's instructions and failed to inform him of her failure to follow his directions, Mr. Byrne is certainly not responsible for her actions or inaction and that she did not give him any indication that she was not following his treatment plan that he had explained to her.

It is further anticipated Dr. Cox will testify that obstructive sleep apnea is a very common problem and in September and October of 2003 there was no information generally available to pain management physicians and physician assistants that there was any special concern or problem with Methadone in patients with obstructive sleep apnea that was any different than any other narcotic including those that Mrs. Schmechel had been on for a long period of time prior to seeing Mr. Byrne.

It is further anticipated Dr. Cox will testify that the standard of care did not require Mr. Byrne to inquire further regarding the exact degree of obstructive sleep apnea or examine her sleep study testing. It is anticipated Dr. Cox will further testify that the fact that for years Mrs. Schmechel had been on higher equivalent doses of Oxycontin than the dose of Methadone that Mr. Byrne put her on (even assuming a starting dose of 30 mg) indicates that Mr. Byrne appropriately complied with the standard of care in how he treated Mrs. Schmechel and the extent to which he considered her sleep apnea, i.e., that it was being treated by C-pap, as there was nothing that would have made Mr. Byrne believe that Methadone posed any greater risk with respect to the sleep apnea to Mrs. Schmechel.

It is also anticipated Dr. Cox will testify that the cause of Mrs. Schmechel's death is uncertain and that another condition she had was just as, if not more, likely to have caused her death than the

Methadone and Hydrocodone. In providing this opinion, it is anticipated Dr. Cox will rely on the descriptions provided regarding the scene of death and his knowledge of Mrs. Schmechel's various co-morbid medical conditions and personal habits.

It is further anticipated Dr. Cox will testify that the case specific documents he has reviewed, along with the depositions of Mr. Byrne and Dr. Dille, establish a thorough, careful, and compassionate job performed by Mr. Byrne.

It is anticipated Dr. Cox will be deposed in this matter and may testify regarding any issue addressed during the course of his deposition.

It is further anticipated Dr. Cox will testify that Dr. Dille's care and treatment of Mrs. Schmechel met the standard of care in all respects and that Dr. Dille appropriately supervised Mr. Byrne.

Dr. Cox is expected to respond to and/or rebut opinions provided by medical expert witnesses called by plaintiffs, including, but not limited to, Mr. James Keller, Arthur Lipman, Pharm-D, Stephen Lordon, M.D., and Kimberly Vorse, M.D.

It is anticipated Dr. Cox will address, explain and render expert opinions with regard to relevant medical subjects within his expertise, including, but not limited to, Class II narcotics (including OxyContin and Methadone), Hydrocodone, Amitriptyline, sleep apnea (including obstructive sleep apnea), opioid use (including long-term use), and any clinical findings and laboratory evaluations performed on Mrs. Schmechel.

3. Keri L. Fakata, Pharm.D
3838 S. 700 E., Suite 202
Salt Lake City, Utah 84106

Dr. Fakata is a Pharm.D practicing at Lifetree Pain Clinic in Salt Lake City, Utah. Dr. Fakata has been formally retained by counsel for defendant Thomas J. Byrne. Dr. Fakata's Curriculum

Vitae is attached hereto as Exhibit F. Dr. Fakata charges \$250/hour for her work on this case. Dr. Fakata has not testified as an expert witness within the last four years.

Subject Matter:

Applicable medical principals, liability, causation, and damages

Substance of Facts:

A list of case materials Dr. Fakata reviewed is attached hereto as Exhibit G. In addition to the case specific items Dr. Fakata may use in her review of this case and the opinions she renders in this case, she will be provided the depositions of plaintiffs' experts and plaintiffs' treating physicians once those deposition have been taken. She may also rely on relevant medical research and/or literature related to any of the subject matters addressed in plaintiffs' experts' disclosure, this expert disclosure, or depositions taken in this case. She will also be provided all documents plaintiffs' expert have reviewed and are relying on (however, plaintiffs have not yet provided all of those documents to Mr. Byrne's counsel).

Substance of Opinions:

It is expected Dr. Fakata will testify as to all opinions and items contained within the Affidavit of Keri Fakata, Pharm.D. dated June 4, 2007, which is attached as Exhibit H. It is further anticipated she will testify that all opinions she expresses are held with reasonable medical certainty.

It is anticipated that Dr. Fakata will testify regarding the pharmacologic properties, including the pharmacokentic and pharacodynamic properties, of Methadone, OxyContin, Hydrocodone, and other medications which had been prescribed for Mrs. Schmechel by Mr. Byrne and other healthcare providers. It is further anticipated she will testify regarding what information was reasonably known in September and October 2003 regarding Methadone, Hydrocodone, OxyContin, and other medications provided to Mrs. Schmechel by Mr. Byrne or other healthcare providers.

It is further anticipated she will testify that obstructive sleep apnea is a very common problem and in September and October of 2003 there was no information generally available to pain management physicians and physician assistants that there was any special concern or problem with Methadone in patients with obstructive sleep apnea that was any different than any other narcotic including those that Mrs. Schmechel had been on for a long period of time prior to seeing Mr. Byrne. It is anticipated Dr. Fakata will testify that the fact that for years Mrs. Schmechel had been on higher equivalent doses of Oxycontin than the dose of Methadone that Mr. Byrne put her on (even assuming a starting dose of 30 mg) indicates that Mr. Byrne appropriately complied with the standard of care in how he treated Mrs. Schmechel and the extent to which he considered her sleep apnea, i.e., that it was being treated by C-pap, as there was nothing that would have made Mr. Byrne believe that Methadone posed any greater risk with respect to the sleep apnea to Mrs. Schmechel.

It is anticipated Dr. Fakata will testify that the cause of Mrs. Schmechel's death is uncertain and that another condition she had was just as, if not more, likely to have caused her death than Methadone and/or Hydrocodone. In providing this opinion, it is anticipated Dr. Fakata will rely on the descriptions provided regarding the scene of death and her knowledge of Mrs. Schmechel's various co-morbid medical conditions and personal habits. It is anticipated she will also testify regarding the blood levels of Methadone and Hydrocodone pre-death and post-death.

It is further anticipated that if Dr. Lipman is permitted to testify regarding standard of care and whether Dr. Dille and/or Mr. Byrne complied with the standard of care, then Dr. Fakata will testify that Mr. Byrne met the standard of care applicable to a physician assistant practicing pain management medicine in September and October 2003 in Twin Falls, Idaho in all aspects of his care and treatment of Mrs. Schmechel. In addition, it is anticipated she will testify consistent with the disclosure provided above for Mr. Kottenstette.

Dr. Fakata will also be called to rebut the testimony of plaintiffs' experts to the extent it involves her field of practice as a Pharm.D.

It is anticipated Dr. Fakata's deposition will be taken in this case and it is anticipated she will testify at trial regarding what is discussed in her deposition.

4. T.J. Byrne, P.A.
Hall, Farley, Oberrecht & Blanton, P.A.
702 W. Idaho, Ste. 700
Boise, Idaho 83701

Mr. Byrne is a physician assistant who is a named defendant in this matter. Mr. Byrne may provide expert testimony regarding his care and treatment of Mrs. Schmechel, including, but not limited to, his examination, his meetings with her, his conversations with her, his observations, monitoring, his record, his orders, relevant standards of health care practice, causation, and response and rebuttal to medical expert witnesses called by plaintiffs. Mr. Byrne was deposed in this matter and he is anticipated to testify consistent with the testimony provided during the course of his deposition, which transcript and exhibits are incorporated herein by this reference, and may testify as to all issues covered during the course of said deposition.

In addition, Mr. Byrne is anticipated to address medical subjects within his expertise and to rely upon his medical education and experience, his continuing medical education, his knowledge of medical literature applicable to the matter at issue, his review of the medical records of Mrs. Schmechel, his review of the discovery and litigation record in this matter, and deposition testimony taken in the course of discovery in this matter. In addition, Mr. Byrne may testify to and rely upon personal interactions with health care providers, Mrs. Schmechel, and his personal knowledge of the medical care and treatment he provided to Mrs. Schmechel.

5. Clinton Dille, M.D.
Givens Pursley
601 W. Bannock St.
Boise, Idaho 83701

Dr. Dille is a physician who is a named defendant in this matter. Dr. Dille may provide expert testimony regarding Mr. Byrne's care and treatment of Mrs. Schmechel, including, but not limited to, the role and supervision of a physician assistant at the Southern Idaho Pain Institute including during September and October 2003, Mr. Byrne's care and treatment of Mrs. Schmechel, along with relevant standards of health care practice, causation, and response and rebuttal to medical expert witnesses called by plaintiffs. He may also testify regarding his interactions with Mr. Byrne as they related to patients, including Mrs. Schmechel, that Mr. Byrne cared for while at the Southern Idaho Pain Institute. Dr. Dille was deposed in this matter on and he is anticipated to testify consistent with the testimony provided during the course of his deposition, which transcript and exhibits are incorporated herein by this reference, and Dr. Dille may testify as to all issues covered during the course of said deposition.

In addition, Dr. Dille is anticipated to address medical subjects within his expertise and to rely upon his medical education and experience, his continuing medical education, his knowledge of medical literature applicable to the matter at issue, his review of the medical records of Mrs. Schmechel, his review of the discovery and litigation record in this matter, and deposition testimony taken in the course of discovery in this matter.

6. James Smith, M.D.
Boise Heart Clinic
287 W. Jefferson
Boise, ID 83702

Dr. Smith is a board-certified physician specializing in cardiology and internal medicine. Dr. Smith has been retained by counsel for Mr. Byrne and counsel for Dr. Dille and the Southern Idaho

Pain Institute. Dr. Smith's hourly charge for his services as an expert is \$300/hour. Dr. Smith's curriculum vitae is attached hereto as Exhibit I.

Subject Matter:

Applicable medical principals, causation, and damages

Substance of Facts:

A list of case materials Dr. Smith reviewed is attached hereto as Exhibit J. In addition to the case specific items Dr. Smith used in his review of this case and the opinions he renders in this case, he will be provided the depositions of plaintiffs' experts and plaintiffs' treating physicians once those deposition have been taken. He may also rely on relevant medical research and/or literature related to any of the subject matters addressed in plaintiffs' experts' disclosure, this expert disclosure, or depositions taken in this case. He will also be provided all documents plaintiffs' expert have reviewed and are relying on (however, plaintiffs have not yet provided all of those documents to Mr. Byrne's counsel).

Substance of Opinions:

It is anticipated Dr. Smith will testify that the cause of Mrs. Schmechel's death is uncertain and that another condition she had was just as, if not more, likely to have caused her death than Methadone and/or Hydrocodone. In providing this opinion, it is anticipated Dr. Smith will rely on the descriptions provided regarding the scene of death and his knowledge of Mrs. Schmechel's various co-morbid medical conditions and personal habits. It is also anticipated that Dr. Smith will testify regarding Mrs. Schmechel's reduced life expectancy given her medical condition and personal habits. In discussing these issues, it is anticipated that Dr. Smith will testify regarding certain risk factors Mrs. Schmechel had that would have reduced her life expectancy.

Dr. Smith will also be called to rebut the testimony of plaintiffs' experts to the extent it involves Mrs. Schmechel's cause of death and her life expectancy.

It is anticipated Dr. Smith's deposition will be taken in this case and it is anticipated he will testify at trial regarding what is discussed in his deposition.

7. Scott Phillips, M.D., F.A.C.P.
Toxicology Associates
2555 S Downing Street, Ste. 260
Denver, Colorado 80210

Dr. Phillips is board certified in Medical Toxicology and Internal Medicine. He is currently an Assistant Clinical Professor at the University of Colorado Health Sciences Center, Denver. Dr. Phillips also serves as an editorial reviewer for several peer-reviewed medical journals, including the *Archives of Internal Medicine*. Dr. Phillips has been retained by counsel for Mr. Byrne and counsel for Dr. Dille and the Southern Idaho Pain Institute. Dr. Phillip's curriculum vitae is attached hereto as Exhibit K.

Subject Matter:

Applicable medical principals, causation, and damages

Substance of Facts:

A list of case materials Dr. Phillips reviewed is attached hereto as Exhibit L. In addition to the case specific items Dr. Phillips used in his review of this case and the opinions he renders in this case, he will be provided the depositions of plaintiffs' experts and plaintiffs' treating physicians once those deposition have been taken. He may also rely on relevant medical research and/or literature related to any of the subject matters addressed in plaintiffs' experts' disclosure, this expert disclosure, or depositions taken in this case. He will also be provided all documents plaintiffs' expert have reviewed and are relying on (however, plaintiffs have not yet provided all of those documents to Mr. Byrne's counsel).

Substance of Opinions:

It is anticipated Dr. Phillips will testify that the cause of Mrs. Schmechel's death is uncertain and that another condition she had was just as, if not more, likely to have caused her death than Methadone and/or Hydrocodone. In providing this opinion, it is anticipated Dr. Phillips will rely on the descriptions provided regarding the scene of death and his knowledge of Mrs. Schmechel's various co-morbid medical conditions and personal habits.

It is also anticipated Dr. Phillips will testify regarding the pharmacologic properties, including the pharmacokinetic and pharmacodynamic properties, of Methadone, OxyContin, Hydrocodone, and other medications which had been prescribed for Mrs. Schmechel by Mr. Byrne and other healthcare providers. It is further anticipated he will testify regarding what information was reasonably known in September and October 2003 regarding Methadone, Hydrocodone, OxyContin, and other medications provided to Mrs. Schmechel by Mr. Byrne or other healthcare providers. It is anticipated he will also testify regarding the blood levels of Methadone and Hydrocodone pre-death and post-death.

Dr. Phillips will also be called to rebut the testimony of plaintiffs' experts to the extent it involves Mrs. Schmechel's cause of death and her life expectancy.

It is anticipated Dr. Phillips's deposition will be taken in this case and it is anticipated he will testify at trial regarding what is discussed in his deposition.

8. Janat E. O'Donnell, M.D.
Idaho Pulmonary Associates
901 N. Curtis, Ste. 401
Boise, Idaho 83706
(208) 323-0031

Dr. O'Donnell has been retained by counsel for Mr. Byrne and by counsel for Dr. Dille and the Southern Idaho Pain Institute. Please see Dr. Dille's and Southern Idaho Pain Institute's

disclosure of experts for a description of her anticipated opinions and testimony, which is incorporated herein as it pertains to Dr. O'Donnell.

9. In addition to the above-listed experts, Mr. Byrne may also call as his experts and/or fact witnesses in this case, any and all healthcare providers, including physicians, nurses, health care providers, or consultants, who at any time provided care, treatment, advice, or consultation to Mrs. Schmechel. Such individuals may be called to testify regarding facts or opinions within their scope of knowledge, experience and/or expertise or otherwise as to any matter to which they are competent to testify.

10. Mr. Byrne also reserve the right to call any persons appropriately disclosed by plaintiffs and/or co-defendants (including Dr. Hare and Dr. Binegar) as experts in this case to discuss any matter for which they are competent to testify, including any matter within the scope of their expertise based upon their training, education and/or experience.

11. Insofar as discovery in this matter is ongoing, Mr. Byrne reserves the right to amend or supplement this list to include the designation of additional expert witnesses as may be necessitated by further discovery.

12. Any expert witnesses Mr. Byrne elect not to call at trial are declared to be consulting witnesses only, whether deposed or not. No other party may call such consulting expert without Mr. Byrne's permission.

DATED this 10th day of June, 2007.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By Keely E. Duke
Keely E. Duke - Of the Firm
Attorneys for Defendant Thomas J. Byrne

CERTIFICATE OF SERVICE

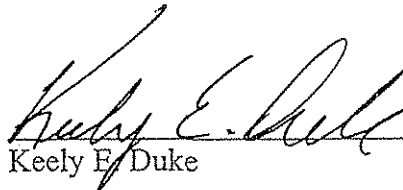
I HEREBY CERTIFY that on the 19th day of June, 2007, I caused to be served a true copy of the foregoing **DEFENDANT THOMAS J. BYRNE'S DISCLOSURE OF EXPERT WITNESSES**, by the method indicated below, and addressed to each of the following:

David Comstock
Law Offices of Comstock & Bush
199 N. Capitol Blvd., Ste. 500
P.O. Box 2774
Boise, Idaho 83701
Attorney for Plaintiffs
Fax No.: (208) 344-7721

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

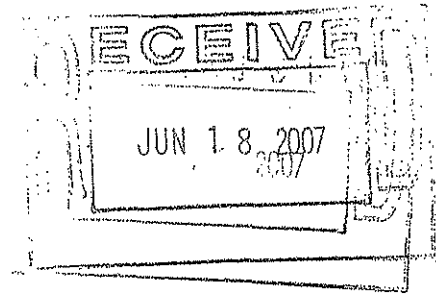
Steven J. Hippler
GIVENS PURSLEY
601 W. Bannock ST.
PO Box 2720
Boise ID 83701-2720
*Attorneys for Clinton Dille, M.D. and
Southern Idaho Pain Institute*

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Keely E. Duke

Steven J. Hippler ISB #4388
Givens Pursley LLP
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
sjh@givenspursley.com
S:\CLIENTS\1740512\Defendants Expert Witness Disclosure.doc



Attorneys for Defendants, Clinton Dillé, M.D. and Southern Idaho Pain Institute

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, Individually, and
as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL, natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

Vs.

CLINTON DILLÉ, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A., and
JOHN DOE and JANE DOE, I through X,

Defendants.

Case No. CV 05 4345

**DEFENDANTS CLINTON DILLÉ, M.D.
AND SOUTHERN IDAHO PAIN
INSTITUTE'S DISCLOSURE OF
EXPERT WITNESSES**

COME NOW the Defendants, Clinton Dillé, M.D. and Southern Idaho Pain Institute,
by and through their counsel of record, and make the following disclosures pursuant to Rule
26(b)(4) of the Idaho Rules of Civil Procedure related to experts who may be called to testify
at trial:

GENERAL RESERVATIONS AND OBJECTIONS

Despite having requested depositions of Plaintiffs' experts and of key fact witnesses substantially prior to the date Defendants were required to disclose their expert witnesses, Plaintiffs did not provide such dates so that depositions could be taken in advance of the deadline for disclosing such experts and opinions. Accordingly, Defendants reserve the right to amend and supplement this expert witness disclosure based upon the deposition testimony of fact witnesses previously requested but not yet deposed as well as based upon the deposition testimony of experts retained by Plaintiffs. Furthermore, Plaintiffs' disclosures did not identify the documents and authority reviewed or relied upon by their experts, which Defendants' experts are expecting to review and may rely upon or rebut such materials. Further, discovery is ongoing and Defendants anticipate the potential for additional opinions, need for additional experts, and/or additional bases upon which expert opinions are formed or relied based upon such discovery. In addition, Defendants' experts may further and more fully explain their opinions at the depositions of such experts to be taken by Plaintiffs.

DISCLOSURES

Without waiving such objections, and subject to such reservations, Defendants make the following disclosures:

1. Clinton L. Dillé, M.D. Dr. Dillé is a Defendant in this action. It is anticipated that he will testify regarding his personal involvement in this case and will testify that his care, to the extent he had any involvement in the care of Ms. Schmechel, met the applicable standard of care. Furthermore, Dr. Dillé will testify that his supervision of Mr. Byrne in all respects met the standard of care. In addition, Dr. Dillé will testify that Mr. Byrne's care was consistent with and in all respects met the applicable standard of care for physician's assistants practicing pain management in an outpatient pain management clinic in Twin

Falls, Idaho in September and October 2003. Dr. Dillé's opinions and the bases for them are more fully outlined in his deposition, which has previously been taken in this case. Furthermore, Dr. Dillé may rebut the testimony of any of the Plaintiffs' experts as outlined in their disclosures, various affidavits, and such testimony as may be presented at trial.

More specifically, Dr. Dillé will testify that Mr. Byrne obtained an adequate and appropriate history and performed an appropriate physical of Ms. Schmechel. He will testify that the standard of care did not require him to contact Dr. Vorse prior to instituting the therapy that he did nor to obtain her records. Rather, he could, in his judgment, rely upon the history obtained. He will testify that even had Mr. Byrne obtained the records of Dr. Vorse, there was nothing in the records which would have indicated that the course that he undertook with Ms. Schmechel was in any way contraindicated or inappropriate.

Furthermore, Dr. Dillé will testify that Mr. Byrne appropriately elected to switch Ms. Schmechel's long-acting opioid from Oxycontin to methadone and that the dosing that he initiated was appropriate and consistent with the standard of care. He will testify that the instructions and warning he gave and consent obtained from Ms. Schmechel was adequate and in all respects complied with the standard of care. He will also testify that Mr. Byrne appropriately followed Ms. Schmechel by contacting her on Monday and arranging for her to contact him the following day and that his titration of the Methadone dose upward on Monday and Tuesday were appropriate and reasonable and consistent with the applicable standard of care. He will testify that Mr. Byrne made it clear to Mrs. Schmechel that she could contact the clinic should she have any problems and that this was consistent with the standard of care.

Dr. Dillé will testify that his interaction with Mr. Byrne on Monday as outlined in his deposition was appropriate for both Mr. Byrne and Dr. Dillé and each respectively met their applicable standards of care in Mr. Byrne reporting to his supervising physician and

informing him regarding Ms. Schmechel and in Dr. Dillé providing appropriate supervision of Mr. Byrne. He will also testify that the other medication changes made by Mr. Byrne were appropriate and consistent with the applicable standard of care to Mr. Byrne. Dr. Dillé will also testify, in the event that any testimony is allowed at trial regarding supposed leg edema regarding Ms. Schmechel over the weekend that such edema would not have appeared to be consistent with or suggestive of methadone toxicity, and if anything was likely more consistent with Ms. Schmechel's history of lower leg edema and pain. He will also testify that based upon the records made by Mr. Byrne contemporaneous with his telephone conversations with Ms. Schmechel that it does not appear Ms. Schmechel reported any such alleged concerns to Mr. Byrne at any time.

It is also anticipated that Dr. Dillé will testify that Mr. Byrne's initial prescription for 90 Methadone tablets and 70 Hydrocodone tablets complied with the applicable standard of care. Dr. Dillé will testify that writing a month's supply of such medications is appropriate and within the standard of care given Mrs. Schmechel's history, including her use of Hydrocodone and Oxycontin, her condition, including the need to switch from one long-acting pain medication regimen to another, the information that was provided as to how much of both Methadone and Hydrocodone to take, and the anticipation that her long-term pain management therapy would continue. Dr. Dillé will also testify that it is standard practice when starting a patient on medication which they may take for at least a month to prescribe a month's supply for the patient's convenience and to lessen the impact of cost upon the patient. Furthermore, as it was anticipated that Mrs. Schmechel would be on medications for the long term given her history of chronic pain and that her orthopedic surgeon concluded there was no surgical component to her pain, such prescriptions were appropriate. Dr. Dillé will also testify that based upon the records and the interaction Mr. Byrne had with Mrs. Schmechel, that it was apparent to Mr. Byrne and to Dr. Dillé that Mrs.

Schmechel was following the advice and instructions given to her regarding dosing and if she did not, that she failed to report this to Mr. Byrne or Dr. Dillé, or if she was having problems or side effects failed to report them as well, and that neither Dr. Dillé nor Mr. Byrne are responsible for such failure.

It is further anticipated that Dr. Dillé will testify that the applicable standard of care did not require Mr. Byrne to follow up with Mrs. Schmechel every day as Plaintiffs' expert allegedly will testify. Dr. Dillé will explain that such position regarding the follow up care related to the initiation of Methadone is not consistent with the training Dr. Dillé received, his practice as a pain management physician or of any standard of care of which he is aware related to a patient with Mrs. Schmechel's pain management and medical history and condition as such standard existed in Twin Falls Idaho in September and October of 2003.

Dr. Dillé may further testify that obstructive sleep apnea is a very common problem and was in September and October of 2003, and there was no information generally available to him as a pain management physician nor to physician's assistants in the Twin Falls community that there was any special concern or problem with Methadone in patient with obstructive sleep apnea that was in any way different than other narcotics including those Mrs. Schmechel had been on for substantial periods of time prior to seeing Mr. Byrne. He will testify that the standard of care did not require neither Mr. Byrne nor Dr. Dillé to inquire into the exact degree of obstructive sleep apnea or examine her sleep study testing or inquire further regarding such sleep apnea other than to confirm it was being treated with appropriate therapy, C-pap.

It is also anticipated that Dr. Dillé will address, explain and render expert opinions with regard to relevant medical subjects within his expertise, including but not limited to the prescription of Class 2 narcotics (including Oxycontin and Methadone), other medications, including Hydrocodone, Amitriptyline, and regarding treating patients in a pain management

practice with obstructive sleep apnea, treating patients with opiates, including long-term chronic use, and also regarding any clinical findings and laboratory evaluations performed by Mrs. Schmechel by any other providers.

Dr. Dillé may also testify that it appears that Ms. Schmechel's cause of death may not have involved Methadone, but rather, may have just likely resulted from a fatal arrhythmia or other cardiac event due to other underlying pathology and preexisting conditions in Ms. Schmechel, based upon the pathology findings, coroner and police reports, deposition testimony of the death scene, and Mrs. Schmechel's interactions before her death; and his experience, expertise and professional knowledge.

Dr. Dillé's opinions are supported by his years of training, education and experience as a pain management physician as well as his discussions with Mr. Byrne and review of the medical records from Southern Idaho Pain Institute as well as from all other providers which have been disclosed during discovery in this case. Dr. Dillé's opinions are also supported by the manufacturer's package insert for Methadose oral tablets available in October 2003, as well as various equianalgesic tables and guidelines available in September 2003. Dr. Dillé may also rely upon any text, treatise, article, or other similar publication produced by any party or referenced by any party or expert in this case or referenced in the curriculum vitae of any expert in this case. He may also explain or rebut any such treatise or text which may be offered by Plaintiffs in this case. Dr. Dillé may also testify consistent with the disclosed opinions of Dr. Cox, Dr. Fakata, and Mr. Hottenstetter, and those of Dr. Hare and Dr. Binegar.

A copy of Dr. Dillé's curriculum vitae was previously produced in this matter, which along with his deposition testimony establishes his qualifications to testify as an expert witness in this case.

2. T. J. Byrne, P.A. Please see the disclosure of Defendant Byrne regarding his opinions. See also, Mr. Byrne's deposition testimony in this case and the disclosure.

4. William Binegar, M.D. See the Affidavit of William Binegar in Opposition to Plaintiffs' Motion for Punitive Damages and the Curriculum Vitae of Dr. Binegar attached to said Affidavit which is attached as Exhibit 2. In addition to the opinions set forth by Dr. Binegar in his Affidavit, Dr. Binegar may also offer the following opinions:

It is anticipated that Dr. Binegar will testify that Dr. Byrne met the standard of care applicable to a physician's assistant practicing pain management medicine in September and October 2003 in Twin Falls, Idaho in all aspects of his care and treatment of Mrs. Schmechel, and that he was appropriately supervised by Dr. Dillé and that such supervision complied with the applicable standard of care for a pain management physician supervising a physician's assistant in Twin Falls, Idaho in September and October of 2003..

It is anticipated that Dr. Binegar will testify that Mr. Byrne complied with the standard of care in his care and treatment of Mrs. Schmechel in all respects. Furthermore, it is anticipated that Dr. Binegar will testify that based upon his review of the records and deposition transcripts, it is apparent to him that Mr. Byrne was an appropriately trained and experienced physician's assistant and was appropriately supervised. He will also testify that Mr. Byrne had an appropriate understanding for a physician's assistant of the use and prescription of Methadone. Accordingly, any assertions by Plaintiffs' expert that Mr. Byrne appeared to lack the appropriate level of understanding of the pharmacologic properties of Methadone is, in Dr. Binegar's opinion, inaccurate. Indeed, Dr. Binegar will testify that Mr. Byrne had an appropriate understanding of the pharmacology of Methadone and other medications prescribed and appropriately prescribed them and that Dr. Dillé similarly possessed an appropriate knowledge of such medications and their pharmacology.

It is also anticipated that Dr. Binegar will testify that Mr. Byrne complied with the standard of care in obtaining an appropriate and thorough history regarding Mrs. Schmechel. Dr. Binegar will testify that Mr. Byrne performed an adequate and thorough physical examination of Mrs. Schmechel, appropriately and adequately reviewed her past medical conditions, including obtaining knowledge of a history of obstructive sleep apnea being treated by C-pap and other past medical treatment and conditions, her current conditions, and relevant medications being taken, the reason she sought treatment at Mr. Byrne and Dr. Dillé's clinic and he adequately obtained an understanding of her current status and whether or not it was effective for Mrs. Schmechel.

It is anticipated Dr. Binegar will also testify that Mr. Byrne appropriately verified that Mrs. Schmechel had an objective basis for pain for which she complained by obtaining her MRI demonstrating arachnoiditis, suggesting a neuropathic pain (which supports the prescription of methadone) and by obtaining her latest orthopedic surgeon ruling out a surgical option to correct her spinal problems.

Dr. Binegar will testify that a provider such as Mr. Byrne and Dr. Dillé may use their discretion in determining what records, if any, as well as what providers, if any, should be contacted in determining an appropriate course of treatment of a patient. Dr. Binegar will testify there was no reason to delay the implementation of Mrs. Schmechel's treatment until a later date and that the treatment implemented by Mr. Byrne was appropriate and complied with the standard of care. Dr. Binegar will also testify that Mr. Byrne performed an adequate history consistent with the standard of care and that Mrs. Schmechel appears to have been a good historian whom Mr. Byrne could rely upon. He will testify that Mr. Byrne obtained an adequate and appropriate amount of information in order to implement his treatment plan. He will also testify that in reviewing Dr. Vorse's records, there is nothing in

those records which would have contraindicated or suggested not going forward with the treatment plan Mr. Byrne devised with respect to Mrs. Schmechel.

With respect to the treatment plan in particular, Dr. Binegar will testify that Mr. Byrne complied with the standard of care in electing to use his discretion and judgment and discontinue Mrs. Schmechel's Oxycontin given that she had not been doing well on the medication despite being on it for a number of years and appropriately elected to use Methadone as a long-acting opiate, particularly given Methadone's known properties in treating patients with neuropathic pain. It was also appropriate to continue her use of Hydrocodone, including increasing the dose of Hydrocodone per tablet, but limiting the number of tablets to be taken in a day for breakthrough pain, and also very appropriately reduced her Amitriptyline and therefore, was an unnecessary medication which presented potential hazards to Mrs. Schmechel. He will also testify that another reason it was appropriate to try Methadone was because patients who become non-responsive or receive unsatisfactory results to pain medication they have been taking for long periods of time may often benefit by opiate rotation.

It is anticipated that Dr. Binegar will testify that Mr. Byrne's dosing of Methadone was reasonable and in fact, conservative, and complied with the standard of care. He will testify that even had Mr. Byrne elected to start Mrs. Schmechel on 15 mg of Methadone twice a day, or 10 mg three times a day, this would have been an appropriate and reasonable starting dose for her and that such dose would have complied with the applicable standard of care. However, it was appropriate for Mr. Byrne to start at a lower dose and titrate up her dose in the first few days of her treatment, depending upon her reaction to the medication.

It is also anticipated that Dr. Binegar will testify that Mr. Byrne's initial prescription for 90 Methadone tablets and 70 Hydrocodone tablets complied with the applicable standard of care. Dr. Binegar will testify that writing a month's supply of such medications is

appropriate and within the standard of care given Mrs. Schmechel's history, including her use of Hydrocodone and Oxycontin, her condition, including the need to switch from one long-acting pain medication regimen to another, the information that was provided as to how much of both Methadone and Hydrocodone to take, and the anticipation that her long-term pain management therapy would continue. Dr. Binengar will also testify that it is standard practice when starting a patient on medication which they may take for at least a month to prescribe a month's supply for the patient's convenience and to lessen the impact of cost upon the patient. Furthermore, as it was anticipated that Mrs. Schmechel would be on medications for the long term given her history of chronic pain and that her orthopedic surgeon concluded there was no surgical component to her pain, such prescriptions were appropriate. Dr. Binengar will also testify that based upon the records and the interaction Mr. Byrne had with Mrs. Schmechel, that it was apparent to Mr. Byrne and to Dr. Dillé that Mrs. Schmechel was following the advice and instructions given to her regarding dosing and if she did not, that she failed to report this to Mr. Byrne or Dr. Dillé, or if she was having problems or side effects failed to report them as well, and that neither Dr. Dillé nor Mr. Byrne are responsible for such failure.

Dr. Binengar may further testify that obstructive sleep apnea is a very common problem and was in September and October of 2003, and there was no information generally available to him as a pain management physician nor to physician's assistants in the Twin Falls community that there was any special concern or problem with Methadone in patient with obstructive sleep apnea that was in any way different than other narcotics including those Mrs. Schmechel had been on for substantial periods of time prior to seeing Mr. Byrne. He will testify that the standard of care did not require neither Mr. Byrne nor himself to inquire into the exact degree of obstructive sleep apnea or examine her sleep

study testing or inquire further regarding such sleep apnea other than to confirm it was being treated with appropriate therapy, C-pap.

It is also anticipated that Dr. Binengar will address, explain and render expert opinions with regard to relevant medical subjects within his expertise, including but not limited to the prescription of Class 2 narcotics (including Oxycontin and Methadone), other medications, including Hydrocodone, Amitriptyline, and regarding treating patients in a pain management practice with obstructive sleep apnea, treating patients with opiates, including long-term chronic use, and also regarding any clinical findings and laboratory evaluations performed by Mrs. Schmechel by any other providers.

It is further anticipated that Dr. Binengar will testify that Mr. Byrne complied with and exceeded the standard of care in all respects in his follow up care with Mrs. Schmechel. His decision to let her know that the clinic was available to her should she have any questions or problems at any time, and to arrange to follow up with her on the next business day as well as to have her call in the day after that again were appropriate and far exceeded the standard of care, which did not require such close affirmative follow up by the physician or physician's assistant but nonetheless was provided in this case. The information obtained by Mr. Byrne during the Monday and Tuesday conversations demonstrated that Mrs. Schmechel was, at least as far as Mr. Byrne was aware, as reported by Mrs. Schmechel, taking her medication as prescribed, understood the prescription provided to her and explained to her by Mr. Byrne, and that she was tolerating her medication change appropriately and well and was receiving good pain relief. All this complied with the standard of care for Mr. Byrne, as well as in the supervision provided to Mr. Byrne by Dr. Dillé in the implementation of this plan and the follow up.

Furthermore, Dr. Binengar will testify, if testimony is admitted, regarding the alleged symptoms Mrs. Schmechel allegedly had over the weekend and alleged conversations Mrs.

Schmechel allegedly had with Mr. Byrne, that any leg edema Mrs. Schmechel may have been experiencing was very much unlikely related to Methadone toxicity or cause of concern regarding the medications prescribed by Mr. Byrne, but rather were likely reflective of other medical problems Mrs. Schmechel had and previously had experienced.

Furthermore, in any event, it does not appear from the records nor the deposition testimony that this information was conveyed to Mr. Byrne or Dr. Dillé.

It is further anticipated that Dr. Binegar will testify that it is apparent that Mr. Byrne provided adequate and appropriate verbal instructions regarding how to take Methadone to Mrs. Schmechel and that his written instructions were consistent with, in shorthand form, the information provided to her orally, and that from the conversations as documented in the chart on Monday and Tuesday, that Mrs. Schmechel understood this, and at least to Mr. Byrne's knowledge, and Dr. Dillé's knowledge, should he have had reason to look at the chart, that Mrs. Schmechel was following such instructions. Furthermore, Dr. Binegar will testify that it does not appear that Mrs. Schmechel ever expressed any concerns to Mr. Byrne or Dr. Dillé or Southern Idaho Pain Institute employees suggesting she was having any problems, concerns, or other issues with the medication regime she was on or other medical issues requiring their intervention.

Dr. Binegar will also testify regarding the supervision and training provided to Mr. Byrne by Dr. Dillé. He will testify that based upon Mr. Byrne's actions, it is apparent that he was well trained and well qualified and provided excellent and appropriate care consistent with the standard of care. He will also testify that Mr. Byrne's interaction with Dr. Dillé on the Monday following Mr. Byrne having seen Mrs. Schmechel demonstrated that Dr. Dillé provided appropriate and reasonable supervision of Mr. Byrne, by briefly discussing the case, including the general nature of Mrs. Schmechel's problem and the general treatment plan, i.e., Methadone change from Oxycontin and that Dr. Dillé appropriately inquired as to

any medical history of note and appropriately confirmed that Mrs. Schmechel was on C-pap with Mr. Byrne.

Dr. Binegar will also testify what a reasonably prudent physician's assistant and a pain management physician needed to be aware of pursuant to the applicable standards of care in Twin Falls, Idaho in 2003 with respect to the pharmacokinetics of Methadone and other drugs prescribed to Mrs. Schmechel by Mr. Byrne, as well as the use, dosing and prescription of Methadone. He will testify that the Defendants possessed appropriate and adequate and reasonable knowledge regarding the prescription of such medications and appropriately prescribed them.

Dr. Binegar will testify regarding Methadone in general, including its use in Idaho, and the fact it was a widely used medication, one of only two on the State Medicaid's approved formulary for long-acting opiates. He will testify that it was believed in 2003 to be a reasonable, reliable and safe pain medication for use in patients with moderate to severe pain, particularly with patients either with a neuropathic origin for their pain, or patients who could not afford more expensive narcotics, or who were on a pharmacy plan requiring Methadone prescription rather than other medications, as well as for patients such as Mrs. Schmechel who had not had satisfactory results with other opiates or were beginning to not have satisfactory results after long-term use.

He will testify that the information given to Mrs. Schmechel was reasonable and appropriate and complied with the standard of care and that the informed consent obtained was appropriate and consistent with the standard of care.

It is anticipated that Dr. Binegar will testify that it is impossible to determine that Methadone, on a more likely than not basis, played a role in Mrs. Schmechel's death. Instead, Dr. Binegar, based upon the records, depositions, and descriptions of the death scene, as well as toxicology reports and the plaintiff's underlying medical history suggest

other equally likely causes of death, including sudden fatal arrhythmia unrelated to the medication or other cardiac events all of which Mrs. Schmechel was likely to have. He may also testify regarding Mrs. Schmechel's general reduced life expectancy given her underlying medical conditions.

Dr. Binegar's testimony is based upon his years of experience, as well as his training, education and clinical work as a pain management physician. His testimony is also supported on his review of all the underlying medical records produced in this case to date, as well as any others that may be produced as well as the literature identified in the Curriculum Vitae of the various experts in any literature which may be identified by any party or witness during the course of discovery in this case. Dr. Binegar may also rely upon the package insert by the manufacturer of Methadose 10 mg tablets as was applicable in October of 2003, as well as various opiate conversion dosing tables and other publications relevant for the 2003 time frame regarding the use and dosing of Methadone. He will also support his testimony based upon his review of the depositions of the Defendants, the Plaintiffs, and other persons whose depositions have been taken or will be taken in this case including those of other Defendants' experts and the depositions of Plaintiffs' experts. He may also review, rely upon, or rebut any article, treatise, or other publication or document identified during any deposition or during discovery in this case. Dr. Binegar is knowledgeable of the applicable standard of care as is identified in his Affidavit and may also consult with a physician knowledgeable of the standard of care for a pain management physician and for a physician's assistant in Twin Falls, Idaho in October 2003 prior to providing deposition testimony to further confirm and assure that he has actual knowledge of the applicable standard of care.

Dr. Binegar may also testify consistent with the disclosed opinions of Dr. Cox, Dr. Fakata, Mr. Kottenstetter, Dr. Scott Phillips, Dr. Hare, Dr. O'Donnell, Dr. Dillé, and Mr. Byrne.

Dr. Binegar's qualifications as an expert witness in this case are evident from his Curriculum Vitae and as set forth in his Affidavit, and further identified in this Disclosure. In particular, Dr. Binegar is qualified to testify based upon his years of experience as a pain management physician in an outpatient setting similar to that of the Southern Idaho Pain Institute and his supervision of physician's assistants.

Dr. Binegar's compensation for record review and consultation is \$380 per hour. His charges for testimony are \$_____ (This will be supplemented upon confirmation by Dr. Binegar of testimony rates).

Defendants' counsel is seeking to obtain a list of cases in which Dr. Binegar has testified as an expert witness over the past four years and will provide such information pursuant to supplementation, if such information exists or can be created with reasonable effort. Furthermore, the opinions of Dr. Binegar as well as the basis for his opinions and further details regarding the opinions can be obtained through the deposition of Dr. Binegar by Plaintiffs. Furthermore, Dr. Binegar is expected to respond to and/or rebut opinions provided by the medical expert witnesses called by Plaintiffs, including but not limited to, Mr. Keller, Dr. Lipman, Dr. Lordan, and Dr. Vorse, and Jim Keller, PA-C.

3. Bradford Hare, M.D. Dr. Hare will testify consistent with the Affidavit of Bradford Hare in Opposition to Plaintiffs' Motion for Punitive Damages and the curriculum vitae of Dr. Hare attached to said Affidavit, attached hereto as Exhibit 1. In addition to the opinions set forth by Dr. Hare in his Affidavit, Dr. Hare may also offer the following opinions:

It is also anticipated that Dr. Hare will testify that Mr. Byrne's initial prescription for 90 Methadone tablets and 70 Hydrocodone tablets complied with the applicable standard of

care. Dr. Hare will testify that writing a month's supply of such medications is appropriate and within the standard of care given Mrs. Schmechel's history, including her use of Hydrocodone and Oxycontin, her condition, including the need to switch from one long-acting pain medication regimen to another, the information that was provided as to how much of both Methadone and Hydrocodone to take, and the anticipation that her long-term pain management therapy would continue. Dr. Hare will also testify that it is standard practice when starting a patient on medication which they may take for at least a month to prescribe a month's supply for the patient's convenience and to lessen the impact of cost upon the patient. Furthermore, as it was anticipated that Mrs. Schmechel would be on medications for the long term given her history of chronic pain and that her orthopedic surgeon concluded there was no surgical component to her pain, such prescriptions were appropriate. Dr. Hare will also testify that based upon the records and the interaction Mr. Byrne had with Mrs. Schmechel, that it was apparent to Mr. Byrne and to Dr. Dillé that Mrs. Schmechel was following the advice and instructions given to her regarding dosing and if she did not, that she failed to report this to Mr. Byrne or Dr. Dillé, or if she was having problems or side effects failed to report them as well, and that neither Dr. Dillé nor Mr. Byrne are responsible for such failure.

Dr. Hare may further testify that obstructive sleep apnea is a very common problem and was in September and October of 2003, and there was no information generally available to him as a pain management physician nor to physician's assistants in the Twin Falls community that there was any special concern or problem with Methadone in patient with obstructive sleep apnea that was in any way different than other narcotics including those Mrs. Schmechel had been on for substantial periods of time prior to seeing Mr. Byrne. He will testify that the standard of care did not require neither Mr. Byrne nor Dr. Dillé to inquire into the exact degree of obstructive sleep apnea or examine her sleep study testing

or inquire further regarding such sleep apnea other than to confirm it was being treated with appropriate therapy, C-pap.

It is also anticipated that Dr. Hare will address, explain and render expert opinions with regard to relevant medical subjects within his expertise, including but not limited to the prescription of Class 2 narcotics (including Oxycontin and Methadone), other medications, including Hydrocodone, Amitriptyline, and regarding treating patients in a pain management practice with obstructive sleep apnea, treating patients with opiates, including long-term chronic use, and also regarding any clinical findings and laboratory evaluations performed by Mrs. Schmechel by any other providers.

If testimony in any way is admitted regarding alleged symptoms Ms. Schmechel allegedly had over the weekend and alleged conversations Ms. Schmechel allegedly had with Mr. Byrne, then the testimony of Dr. Hare may be offered that leg edema was very unlikely related to methadone toxicity, but instead likely related to her underlying medical conditions which included a history of any leg edema.

Dr. Hare will testify what reasonably prudent physicians assistants and pain management physicians needed to be aware of pursuant to the applicable respective standards of care in Twin Falls, Idaho in 2003 with respect to the pharmacokinetics and use and prescription of Methadone, Hydrocodone, and Amitriptyline and that the Defendants possessed adequate and reasonable knowledge regarding the same and reasonably and appropriately prescribed the same to Ms. Schmechel.

Dr. Hare will also rebut the testimony of Plaintiffs' experts, including that testimony as identified in the affidavits of Dr. Lipman and the expert disclosures pertaining to Plaintiffs' additional experts. He will also testify that Mr. Byrne obtained more than adequate information regarding Ms. Schmechel's C-pap and that she was receiving treatment for it. He will also testify that at the time in question, obstructive sleep apnea was not thought to

present any significant problem with respect to the prescription of methadone in comparison to other schedule narcotics, including the Oxycontin that she was already taking and that the fact that she had sleep apnea, regardless of degree, did not preclude the prescription of the medications that Mr. Byrne did prescribe and the amounts that he prescribed. He will provide expert testimony regarding what uses generally known by providers such as Dr. Dillé and Mr. Byrne in 2003 regarding Methadone and pharmacological properties of such medications, as well as any changes in such knowledge subsequent to October 2003. He will also testify that the handwritten note given to Ms. Schmechel as referenced by Plaintiffs' experts was a reasonable summary of the verbal information that he had given Ms. Schmechel and that it appears from the interactions with Ms. Schmechel on Monday and Tuesday by telephone that Ms. Schmechel understood and followed Mr. Byrnes' verbal instructions which were repeated in shorthand version in the written note.

Dr. Hare will testify regarding Methadone in general, including the fact that it was a widely used and thought to be reliable and safe pain medication for use with patients with moderate to severe pain, particularly patients either with a neuropathic origin for their pain, or patients who could not afford more expensive narcotics, as well as for patients who has not satisfactorily done well on other opioids. He will testify that the informed consent obtained by Mr. Byrne for the prescriptions that he provided and the treatment that he provided was appropriate and complied with the standard of care. He will testify that Methadone either likely did not play a role in Ms. Schmechel's death or, if it did, it was the result of Ms. Schmechel taking Methadone substantially in excess of what was prescribed, most likely taken in excess in the day of and/or the day before death, in contradiction to the prescription instructions by Mr. Byrne. He will testify neither Mr. Byrne nor Dr. Dillé was provided any information by Mrs. Schmechel or her family that was or should have been a

cause of concern. He may also testify that Mrs. Schmechel had a substantially reduced life expectancy given her underlying medical conditions and lifestyle habits.

Dr. Hare's testimony will be supported based on his years of experience as well as his training and education and his clinical work in pain management as well as his teaching of pain management to medical students, residents, and fellows. His testimony is also supported by the literature identified in his curriculum vitae as well as all literature identified in all other experts' curricula vitae, as well as any literature identified by any party or witness during the course of discovery in this case; the package insert by the manufacturer of Methadose 10 mg tablet applicable in 2003; various conversion dosing tables and other publications regarding the use of methadone applicable in 2003. He also will support his testimony based upon the depositions of the Defendants, the Plaintiffs, and other persons whose depositions have been taken and will be taken prior to trial as well as the depositions of other Defendants' experts and depositions of Plaintiffs' experts, including any article, treatise, or other publication or document identified during such depositions or during discovery in this case. He will also rely upon the medical records from the Southern Idaho Pain Institute as well as from all other providers of Ms. Schmechel that have been produced in this case. Dr. Hare also will likely consult with a physician personally familiar with the standard of care in Twin Falls, Idaho for a pain management physician and a physicians assistant in a pain management practice in September and October 2003 prior to providing deposition testimony in this case to assure that his knowledge of the standard of care is consistent with what he believes the standard of care to have been in Twin Falls, Idaho for such practitioners at the time and under the circumstances in question. Dr. Hare may also testify consistent with the disclosed opinions of Dr. Cox, Dr. Fakata, Mr. Kottenstetter, Dr. Binegar, Scott Phillips, M.D. and will rebut, specifically the opinions of Plaintiffs' experts, including Dr. Lipman, Dr. Lordan, Jim Keller, PA-C, and Dr. Vorse.

Dr. Hare's qualifications as a witness in this case are evident from his curriculum vitae and as set forth in his affidavit and as further identified in this disclosure. Dr. Hare's compensation for record review and consultation is \$300 per hour and for testimony will be supplemented once the information is obtained.

Defendants' counsel is seeking to obtain a list of cases in which Dr. Hare has testified as an expert witness in the past four years and will provide such a list pursuant to supplementation if such a list exists or can be created with reasonable effort. Further opinions of Dr. Hare, bases for his opinions, and further detail regarding his opinions can be obtained by Plaintiffs through the deposition of Dr. Hare. Defendants reserve the right to supplement this disclosure of Dr. Hare based upon further deposition and other discovery.

5. Janet O'Donnell, M.D. Dr. O'Donnell is a medical doctor, board certified in internal medicine, pulmonology, critical care medicine and sleep medicine. Dr. O'Donnell is the director of the sleep lab and sleep medicine studies at Saint Alphonsus Regional Medical Center. Dr. O'Donnell is, among other things, an expert in sleep medicine. Dr. O'Donnell has vast experience in diagnosing, treating, and overseeing the care of patients with sleep apnea, including obstructive sleep apnea. Furthermore, as an internal medicine physician specializing in critical care and pulmonology, she is familiar with the treatment of patients with narcotic medications, including those prescribed to Mrs. Schmechel and at issue in this case, as well as the treatment of such patients with obstructive sleep apnea.

It is anticipated that Dr. O'Donnell will testify that obstructive sleep apnea was an extremely common problem and in September and October of 2003, there was no information generally available to pain management physicians and physician's assistants, nor even to herself as a specialist in sleep medicine, that there was any special concern or problem with Methadone in patients with obstructive sleep apnea. She was unaware of and believes the standard of care was such that it was not expected for providers such as Mr.

Byrne or Dr. Dillé to have any reason to believe there was any difference between Methadone and other narcotics, including those that Mrs. Schmechel had been on for a long period of time prior to seeing Mr. Byrne. It is anticipated that Dr. O'Donnell will testify that the fact that Mrs. Schmechel had been on higher equivalent doses of Oxycontin and other respiratory depressants than what was prescribed by Mr. Byrne and the fact that Mrs. Schmechel was thought to be treated with C-pap should have given Mr. Byrne no reason not to go forward with his plan and management of Mrs. Schmechel in the manner in which he did notwithstanding her obstructive sleep apnea. She will testify that the standard of care did not require Mr. Byrne to determine the severity of Mrs. Schmechel's sleep apnea and furthermore, that simply learning she was being treated with C-pap gave sufficient information to give an adequate understanding of the nature of the obstructive sleep apnea and its likely severity. Furthermore, Dr. O'Donnell will testify regarding the sleep studies performed on Mrs. Schmechel and provide interpretation of those. She takes issue that at the time the studies were taken that Mrs. Schmechel qualified for "severe" obstructive sleep apnea, but instead had moderate obstructive sleep apnea. She will also testify regarding physical nature of obstructive sleep apnea and contrast it with that of central sleep apnea and distinguish between the two, the difference and the concerns between the two, the treatment differentials between the two. She will also rebut the expected testimony of Dr. Vorse, and the Plaintiffs' disclosed expert witnesses.

In addition, Dr. O'Donnell will testify that as a critical care physician, she is familiar with the narcotic prescriptions and felt that the dosing utilized by Mr. Byrne was very conservative and appropriate dosing. Dr. O'Donnell may also testify regarding any changes regarding knowledge with respect to Methadone and obstructive sleep apnea between the time frame at issue in the lawsuit and the present time.

Dr. O'Donnell may also testify regarding Mrs. Schmechel's reduced life expectancy given her underlying multiple co-morbid conditions and personal habits. She may also testify that the cause of death was as likely related to other medical explanations such as sudden arrhythmia or other cardiac or pulmonary issues and/or events in comparison with the alleged cause of death of a Methadone and/or Hydrocodone toxicity.

Dr. O'Donnell bases her opinion upon her training, education, and experience practicing in Boise, Idaho and interacting with physicians and patients from Twin Falls, Idaho in both her sleep medicine practice and her practice as a critical care physician and pulmonologist. Her testimony is also supported by the literature identified in her Curriculum Vitae as well as those identified of the other experts disclosed by all parties in this case as well as literature identified by any party or witness during the course of discovery in this case or ordering in a deposition as well as the package insert by the manufacturer of Methadose applicable in 2003 and various conversion dosing tables and other publications regarding the use of Methadone applicable in 2003. She also will support her testimony based upon her review of and knowledge regarding the literature concerning obstructive sleep apnea as was generally available in 2003 and before that as well as that subsequently available. She also will support her testimony based upon the depositions of the Defendants, the Plaintiffs and other persons whose depositions have been taken and/or will be taken prior to trial, as well as the depositions of other Defendants' experts and the depositions of Plaintiffs' experts, including any article, treatise, or other publication or document identified during such deposition or during discovery in this case. She will also rely upon the records from the Southern Idaho Pain institute as well as those from other providers of Mrs. Schmechel that have been or will be produced in this case.

Dr. O'Donnell's qualifications as an expert witness in this case are evident from her Curriculum Vitae which is attached hereto, as well as explained in this disclosure. Dr. O'

Donnell's compensation for record review and consultation is \$200 per hour and her charges for testimony are \$_____ (Defendants will confirm Dr. O'Donnell's testimony charges and will supplement accordingly).

It is not believed that Dr. O'Donnell has testified as an expert witness in the past four years except as a treating witness in various legal matters regarding patients she has seen, but will confirm the same and will provide a list of such cases, if any, if such a list can be obtained with reasonable effort. Furthermore, the opinions of Dr. O'Donnell, the basis for her opinions and further details regarding her opinions can be obtained by Plaintiffs through the deposition of Dr. O'Donnell will provide such further opinions as may be elicited during her deposition. Defendants reserve the right to supplement the disclosure of Dr. O'Donnell based upon further depositions and other discovery.

6. James Smith, M.D. See disclosure of Dr. Smith by Mr. Byrne's counsel.

7. Scott Phillips, M.D. See Disclosure of Dr. Phillips by Mr. Byrne's counsel.

8. Rodde Cox, M.D., Mr. Kottenstetter, Dr. Fakata and other experts disclosed by Mr. Byrne's counsel. See Disclosure by Mr. Byrne's counsel.

8. In addition to the above-listed experts, Dr. Dillé and the Southern Idaho Pain Institute may call as their experts and/or fact witnesses in this case, any and all health care providers, including physicians, nurses, technicians, consultants or other providers who may have at any time provided care, treatment, advice, or consultation to Mrs. Schmechel. Such individuals may be called to testify regarding facts or opinions within the scope of their knowledge, experience, and/or expertise or otherwise as to any matter in which they are competent to testify. Likewise, Defendants may call any non-medical provider who may have expertise regarding any matter in this case, including related to damages or causation with respect to any opinions within the scope of their knowledge, experience, and/or expertise or otherwise as to any matter to which they are competent to testify.

9. Defendants also reserve the right to call any person appropriately disclosed by Plaintiffs and/or co-defendant as experts in this case to discuss any matter for which they are competent to testify, including any matter within the scope of their expertise based upon their training, education and/or experience.

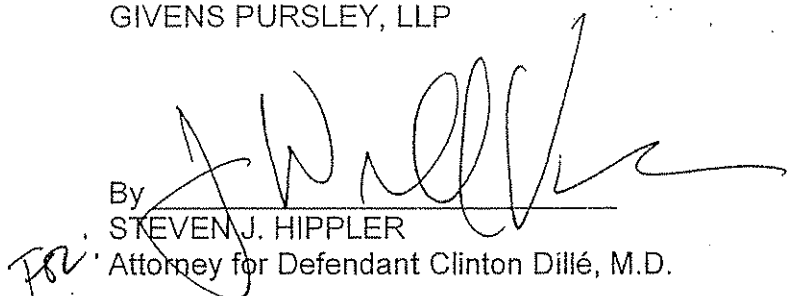
10. Insofar as discovery in this matter is ongoing, Defendants reserve the right to amend or supplement this list to include the designation of additional expert witnesses or additional opinions as may be necessitated by further discovery.

11. Any expert witness Defendants elect not to call at trial or declared to be consulting witnesses only, whether deposed or not. No other party may call such consulting expert without these Defendants' permission.

DATED this 15th day of June 2007.

GIVENS PURSLEY, LLP

By


STEVEN J. HIPPLER

Attorney for Defendant Clinton Dillé, M.D.

CERTIFICATE OF SERVICE

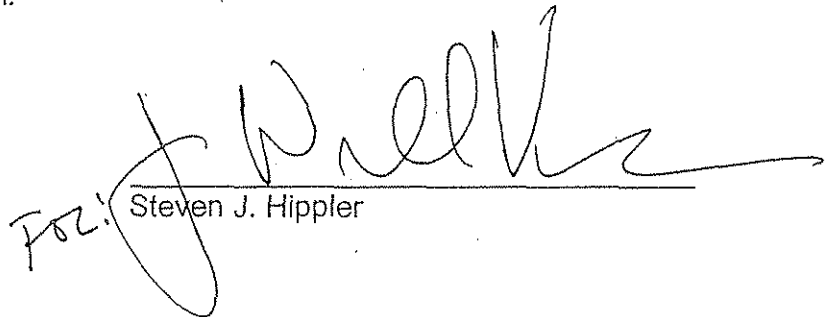
I hereby certify that on this 18th day of June 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

David E. Comstock
COMSTOCK & BUSH
199 N. Capitol Blvd. #500
P.O. Box 2774
Boise, ID 83701-2774
Attorneys for Plaintiff

☐ U.S. Mail
☐ Overnight Mail
☒ Hand Delivery
☐ Fax 344-7721

Richard E. Hall
Keely E. Duke
Hall Farley Oberrecht & Blanton PA
702 W. Idaho Street
P.O. Box 1271
Boise, ID 83701-1271
Attorneys for Defendant, T. J. Byrne P.A.

☐ U.S. Mail
☐ Overnight Mail
☒ Hand Delivery
☐ Fax 395-8585

For: 
Steven J. Hippler

Keely E. Duke
ISB #6044; ked@hallfarley.com
Chris D. Comstock
ISB #6581; cdc@hallfarley.com
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
W:\22-404.53\Byrne expert disclosure supplement.doc

Attorneys for Defendant Thomas J. Byrne

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, individually,
and as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

vs.

CLINTON DILLE, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A. and
JOHN DOE, I through X,

Defendants.

Case No. CV-05-4345

**DEFENDANT THOMAS J. BYRNE'S
SUPPLEMENTAL DISCLOSURE OF
EXPERT WITNESSES**



COMES NOW defendant, Thomas J. Byrne, P.A., by and through his counsel of record,
Hall, Farley, Oberrecht & Blanton, P.A., and makes the following supplemental disclosures pursuant

DEFENDANT THOMAS J. BYRNE'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESSES - 1

to Rule 26(b)(4) of the Idaho Rules of Civil Procedure related to experts who may be called to testify at trial:

DISCLOSURES

Without waiving such objections, and subject to such reservations as set forth in Mr. Byrne's original Disclosure of Expert Witnesses, Mr. Byrne makes the following supplemental disclosures:

1. Chris J. Kottenstette, PA-C
8405 E. Hampden Ave., Apt. 23-C
Denver, CO 80231
(970) 215-0903

Substance of Facts:

In addition to the those items previously identified in Mr. Byrne's original Disclosure of Expert Witnesses, Mr. Kottenstette has reviewed the following items:

Depositions:

- a) Dr. Groben;
- b) Shaiyenne Anton;
- c) Dr. Lordon;
- d) Dr. Lipman;
- e) Mr. Keller;
- f) Dr. Verst;
- g) Dr. Vorse;
- h) Dennis Chambers
- i) Dr. Harris; and
- j) Kent Jensen.

Medical Records:

- a) Medical records of decedents' care providers.

Pleadings:

- a) Plaintiffs' Supplemental Expert Disclosures.

Miscellaneous:

- a) Slides produced by Dr. Lipman; and
- b) Inventory of medications and pill counts prepared by counsel after inspection of materials at Coroner's office.

Mr. Kottenstette has not testified as a retained expert within the previous four years. He did provide trial testimony in February, 2007, as a treating medical provider in a criminal matter set in Los Angeles.

2. Rodde Cox, M.D.
1000 N. Curtis, Suite 202
Boise, Idaho 83706
(209) 377-3435

Substance of Facts:

In addition to the those items previously identified in Mr. Byrne's original Disclosure of Expert Witnesses, Dr. Cox has reviewed the following items:

Depositions:

- a) Dr. Groben;
- b) Shaiyenne Anton;
- c) Dr. Lordon;
- d) Dr. Lipman;
- e) Mr. Keller;
- f) Dr. Verst;

- g) Dr. Vorse;
- h) Dennis Chambers;
- i) Dr. Harris; and
- j) Kent Jensen.

Medical Records:

- a) Medical records of decedents' care providers.

Pleadings:

- a) Plaintiffs' Supplemental Expert Disclosures.

Miscellaneous:

- a) Slides produced by Dr. Lipman; and
- b) Inventory of medications and pill counts prepared by counsel after inspection of materials at Coroner's office.

- 3. Keri L. Fakata, Pharm.D
3838 S. 700 E., Suite 202
Salt Lake City, Utah 84106

Substance of Facts:

In addition to the those items previously identified in Mr. Byrne's original Disclosure of Expert Witnesses, Dr. Fakata has reviewed the following items:

Depositions:

- a) Dr. Groben;
- b) Shaiyenne Anton;
- c) Dr. Lordon;
- d) Dr. Lipman;
- e) Mr. Keller;
- f) Dr. Verst;

- g) Dr. Vorse;
- h) Dennis Chambers;
- i) Dr. Harris; and
- j) Kent Jensen.

Medical Records:

- a) Medical records of decedents' care providers.

Pleadings:

- a) Plaintiffs' Supplemental Expert Disclosures.

Miscellaneous:

- a) Slides produced by Dr. Lipman; and
- b) Inventory of medications and pill counts prepared by counsel after inspection of materials at Coroner's office.

4. James Smith, M.D.
Boise Heart Clinic
287 W. Jefferson
Boise, ID 83702

Subject Matter:

Applicable and internal medicine, medical principles, causation, and damages, including life expectancy.

Substance of Opinions:

It is anticipated that Dr. Smith will testify that, on a more probable than not basis, the likely cause of Mrs. Schmechel's death was a cardiac death, likely a fatal dysrhythmia. He will testify that the dysrhythmia was caused by her underlying cardiac and other co-morbid conditions.

In addition to relying on all materials previously identified in Mr. Byrne's original Disclosure of Expert Witnesses related to Dr. Smith, and identified in this supplemental disclosure, Dr. Smith

relies on the deposition of Dr. Glen Groben, M.D.; Dr. Groben's autopsy report and toxicology report; the deposition testimony of Shaiyenne Anton and Coroner's records and notes, as well as those of the Sheriff's office; death scene photographs, and descriptions of the death scene.

Dr. Smith believes the evidence indicates that Mrs. Schmechel suffered a fatal cardiac dysrhythmia while awake sitting up on her couch. He believes that she had a number of underlying co-morbid conditions which likely contributed to this fatal cardiac death. These would include her cardiomegaly, high blood pressure, history of smoking, and smoking at the time of death, her documented obesity, and her significant narrowing of the coronary arteries. In addition, Dr. Smith will testify that had Mrs. Schmechel not passed away when she did, and if, in fact, her death was attributable to medications she was taking, rather than her underlying co-morbid condition, epidemiologic research, and specific findings of co-morbid risk factors, suggest Mrs. Schmechel's life expectancy was less than ten years from the time she died. To reach this conclusion, Dr. Smith relied upon the autopsy report and findings of co-morbid conditions, as well as the documented history of elevated cholesterol and triglycerides, elevated blood pressure, evidence of the hypertensive kidney damage, the significant stenosis of the major coronary arteries, and her obstructive sleep apnea. Other factors include Mrs. Schmechel's history of smoking and failure to discontinue smoking despite repeated warnings and suggestions to do so, her obesity, her chronic use of narcotics, Bextra, and other medications, as well as other factors identified on autopsy, in depositions, and the medical records.

Dr. Smith also relies upon various epidemiologic studies identifying risk factors and likelihood of death, including the Framingham Study and updates, the MRFIT, Multiple Risk Factor Intervention Study, and his years of clinical practice as a cardiologist, as well as other literature and studies he is familiar with generally. Such information and experience allow him to identify specific

risk factors that increased Mrs. Schmechel's likelihood of an early cardiac death. Her risk was greater than generalized epidemiologic studies that take into account only certain factors, and do not identify other factors that were not known until her autopsy.

Dr. Smith also may rely upon the testimony that may be provided at trial by other defense experts, defendants, and others, as well as Basalt's Disposition of Toxic Drugs in Man, 5th Ed. and any of the documents identified below:

Substance of Facts:

In addition to the those items previously identified in Mr. Byrne's original Disclosure of Expert Witnesses, Dr. Smith has reviewed the following items:

Depositions:

- a) Dr. Groben;
- b) Shaiyenne Anton;
- c) Dr. Lordon;
- d) Dr. Lipman;
- e) Mr. Keller;
- f) Dr. Verst;
- g) Dr. Vorse;
- h) Dennis Chambers;
- i) Dr. Harris; and
- j) Kent Jensen.

Medical Records:

- a) Medical records of decedents' care providers.

Pleadings:

a) Plaintiffs' Supplemental Expert Disclosures.

Miscellaneous:

- a) Slides produced by Dr. Lipman;
- b) Inventory of medications and pill counts prepared by counsel after inspection of materials at Coroner's office;
- c) Various photographs of the death scene produced;
- d) Complete Coroner's file and Ada County Pathologist's file; and
- e) Complete Twin Falls County file.

Literature:

- a) Framingham Heart Study and Cardiac Risk Assessment Profiles; and
- b) MRFIT: Multiple Risk Factor Intervention Study.

5. Scott Phillips, M.D., F.A.C.P.
Toxicology Associates
2555 S Downing Street, Ste. 260
Denver, Colorado 80210

Substance of Facts:

In addition to the those items previously identified in Mr. Byrne's original Disclosure of Expert Witnesses, Dr. Phillips has reviewed the following items:

Depositions:

- a) Dr. Groben;
- b) Shaiyenne Anton;
- c) Dr. Lordon;
- d) Dr. Lipman;
- e) Mr. Keller;
- f) Dr. Verst;

- g) Dr. Vorse;
- h) Dennis Chambers;
- i) Dr. Harris; and
- j) Kent Jensen.

Medical Records:

- a) Medical records of decedents' care providers.

Pleadings:

- a) Plaintiffs' Supplemental Expert Disclosures.

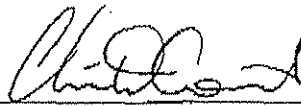
Miscellaneous:

- a) Slides produced by Dr. Lipman; and
- b) Inventory of medications and pill counts prepared by counsel after inspection of materials at Coroner's office.

6. In addition, defendants reserve the right for their experts to rely upon any journal articles, medical texts, treatises, abstracts, teaching materials or other medical literature of any kind or nature referenced or relied upon by plaintiffs' experts, any literature created or edited by plaintiffs' experts, and any other medical literature identified or produced by plaintiffs.

DATED this 5th day of October, 2007.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By 
for Keely E. Duke - Of the Firm
Attorneys for Defendant Thomas J. Byrne

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of October, 2007, I caused to be served a true copy of the foregoing **DEFENDANT THOMAS J. BYRNE'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESSES**, by the method indicated below, and addressed to each of the following:

David Comstock
Law Offices of Comstock & Bush
199 N. Capitol Blvd., Ste. 500
P.O. Box 2774
Boise, Idaho 83701
Attorney for Plaintiffs
Fax No.: (208) 344-7721

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

Steven J. Hippler
GIVENS PURSLEY
601 W. Banrock ST.
PO Box 2720
Boise ID 83701-2720
*Attorneys for Clinton Dille, M.D. and
Southern Idaho Pain Institute*

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

for 
Keely E. Duke

LAW OFFICE
HALL, FARLEY, OBERRECHT & BLANTON, P.A.

702 W. Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701

Telephone: (208) 395-8500
Facsimile: (208) 395-8585

FACSIMILE COVER SHEET

October 5, 2007

TO: Clerk of the Court
TWIN FALLS COUNTY DISTRICT COURT **FAX:** (208) 736-4155

cc: David E. Comstock (208) 344-7721
Byron Foster

Steven J. Hippler (208) 388-1300

FROM: Keely E. Duke/Chris D. Comstock

RE: Schmechel v. Dille, et al.
Case No. CV 05-4345
HFO&B File No. 2-404.53

MESSAGE: Attached for filing please find Defendant Thomas Byrne's Supplemental Disclosure of Expert Witnesses. Please consider the faxed document as the original. Thank you.

PAGES : 10 NOT including cover page

HARD COPY TO FOLLOW: No.

Sent by: P. Buker

Steven J. Hippler ISB #4388
Givens Pursley LLP
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
sjh@givenspursley.com
S:\CLIENTS\7405\2\Defts' Supp Expert Witness Disclosure.doc

Attorneys for Defendants, Clinton Dillé, M.D. and Southern Idaho Pain Institute

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

VAUGHN SCHMECHEL, Individually, and
as Surviving Spouse and Personal
Representative of the Estate of ROSALIE
SCHMECHEL, deceased, and ROBERT P.
LEWIS, KIM HOWARD and TAMARA
HALL, natural children of ROSALIE
SCHMECHEL, deceased,

Plaintiffs,

Vs.

CLINTON DILLÉ, M.D., SOUTHERN
IDAHO PAIN INSTITUTE, an Idaho
corporation, THOMAS BYRNE, P.A., and
JOHN DOE and JANE DOE, I through X,

Defendants.

Case No. CV 05 4345

**DEFENDANTS CLINTON DILLÉ,
M.D. AND SOUTHERN IDAHO PAIN
INSTITUTE'S SUPPLEMENTAL
DISCLOSURE OF EXPERT
WITNESSES**

COME NOW the Defendants, Clinton Dillé, M.D. and Southern Idaho Pain Institute, by
and through their counsel of record, and make the following supplemental disclosures pursuant
to Rule 26(b)(4) of the Idaho Rules of Civil Procedure related to experts who may be called to
testify at trial:

DEFENDANTS CLINTON DILLÉ, M.D. AND SOUTHERN IDAHO PAIN INSTITUTE'S SUPPLEMENTAL
DISCLOSURE OF EXPERT WITNESSES - 1

DISCLOSURES

Without waiving such objections, and subject to such reservations as set forth in Defendants' original Disclosure of Expert Witnesses, Defendants make the following supplemental disclosures:

1. James Smith, M.D.

A. Subject Matter. Applicable and internal medicine, medical principles, causation, and damages, including life expectancy.

B. Substance of Opinions. It is anticipated that Dr. Smith will testify that on a more probable than not basis, the likely cause of Mrs. Schmechel's death was a cardiac death, likely a fatal dysrhythmia. He will testify that the dysrhythmia was caused by her underlying cardiac and other co-morbid conditions.

In addition to relying on all materials identified in Co-Defendant Byrne's previous disclosure of expert witnesses related to Dr. Smith, and identified in this supplemental disclosure, Dr. Smith also relies on the deposition of Dr. Glen Groben, M.D.; Dr. Groben's autopsy report and toxicology report; the deposition testimony of Shaiyenne Shindle and Coroner's records and notes, as well as those of the Sheriff's office; death scene photographs, and descriptions of the death scene.

Dr. Smith believes the evidence indicates that Mrs. Schmechel suffered a fatal cardiac dysrhythmia while awake sitting up on her couch. He believes she had a number of underlying co-morbid conditions which likely contributed to this fatal cardiac death. These would include her cardiomegaly, high blood pressure, history of smoking, and smoking at the time of death, her documented obesity, and her significant narrowing of the coronary arteries.

In addition, Dr. Smith will testify that had Mrs. Schmechel not passed away when she did, and if, in fact, her death was attributable to medications she was taking, rather than her underlying co-morbid condition, epidemiologic research, and specific findings of co-morbid risk factors, suggest Mrs. Schmechel's life expectancy was less than ten years from the time she died. To reach this conclusion, Dr. Smith relied upon the autopsy report and findings of co-morbid conditions, as well as the documented history of elevated cholesterol and triglycerides, elevated blood pressure, evidence of the hypertensive kidney damage, the significant stenosis of the major coronary arteries, and her obstructive sleep apnea. Other factors include Mrs. Schmechel's history of smoking and failure to discontinue smoking despite repeated warnings and suggestions to do so, her obesity, her chronic use of narcotics, Bextra, and other medications, as well as other factors identified on autopsy, in depositions, and the medical records.

Dr. Smith also relies upon various epidemiologic studies identifying risk factors and likelihood of death, including the Framingham Study and updates, the MRFIT, Multiple Risk Factor Intervention Study, and his years of clinical practice as a cardiologist, as well as other literature and studies he is familiar with generally. Such information and experience allow him to identify specific risk factors that increased Mrs. Schmechel's likelihood of an early cardiac death. Her risk was greater than generalized epidemiologic studies that take into account only certain factors, and do not identify other factors that were not known until her autopsy.

Dr. Smith also may rely upon the testimony that may be produced at trial by other defense experts, defendants, and others, as well as Basalt's Disposition of Toxic Drugs in Man, 5th Ed. And any of the documents identified below.

C. Documents Reviewed and which may be relied upon: In addition to those items previously identified by Defendant Byrne and Defendant Byrne's expert disclosure:

i. Depositions.

- a. Glen Groben;
- b. Shaiyenne Shindle;
- c. Dr. Lordon;
- d. Dr. Lipman;
- e. Mr. Keller;
- f. Dr. Verst; and
- g. Dr. Vorse.
- h. Dr. Harris

ii. Medical and other records.

- a. Complete Coroner's file and Ada County Pathologist's file;
- b. Complete Twin Falls County file;
- c. Various photographs of the death scene produced; and
- d. Inventory of medications and pill counts prepared by counsel after inspection of materials at Coroner's office.
- e. Medical records of decedents' care providers

iii. Literature.

- a. Framingham Heart Study and Cardiac Risk Assessment Profiles; and
- b. MRFIT: Multiple Risk Factor Intervention Study.

D. Cases in which testimony was given as a retained expert in the last four years: *Smith v. Minnehan*, Ada County 2004 (deposition and trial testimony).

DATED this 4 day of October 2007.

GIVENS PURSLEY, LLP

By



STEPHEN J. HIPPLER
Attorney for Defendants Clinton Dillé, M.D.
and Southern Idaho Pain Institute

CERTIFICATE OF SERVICE

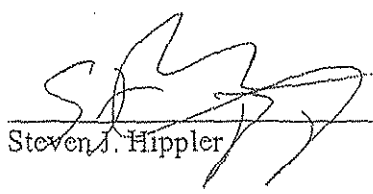
I hereby certify that on this 4 day of October 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

David E. Comstock
COMSTOCK & BUSH
199 N. Capitol Blvd. #500
P.O. Box 2774
Boise, ID 83701-2774
Attorneys for Plaintiff

☐ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☒ Fax 344-7721

Richard E. Hall
Keely E. Duke
Hall Farley Oberrecht & Blanton PA
702 W. Idaho Street
P.O. Box 1271
Boise, ID 83701-1271
Attorneys for Defendant, T. J. Byrne P.A.

☐ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☒ Fax 395-8585



Steven J. Hippler

FAX COVER SHEET

DATE: October 4, 2007

PAGES (INCLUDING COVER): 7

ORIGINAL TO FOLLOW: No

RE: Schmechel v. Dillé (7405-2)

TO: David E. Comstock
Fax: 344-7721

TO: Keely Duke
Fax: 395-8585

Steven J. Hippler
GIVENS PURSLEY LLP
601 W. Bannock
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1275
Fax: 208-388-1300
Email: sjh@givenspursley.com
Website: www.givenspursley.com

MESSAGE:

Please see the attached *Defendants Clinton Dille, M.D. and Southern Idaho Pain Institute's Supplemental Disclosure of Expert Witnesses*.

- Steven J. Hippler

If this fax does not transmit fully or is difficult to read, please contact (208) 388-1295.

CONFIDENTIALITY NOTICE

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you.

S:\CLIENTS\7405\2\Coversheet to parties.DOC